AN

# HISTORICAL AND CHRONOLOGICAL VIEW OF ROMAN LAW.

WITH

NOTES AND ILLUSTRATIONS.

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OXFORD:

PRINTED FOR D. PRINCE AND J. COOKE.

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THE FOLLOWING WORK

IS WITH GREAT RESPECT INSCRIBED

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AND

VERY HUMBLE SERVANT,

ALEXANDER C. SCHOMBERG.

# PREFACE.

OF the many excellencies of the ROMAN CIVIL LAW, there is one which ſeems particularly ſtriking. Every other Syſtem of Legiſlation, beſides the injuries it receives from the neceſſary change of manners, language and modes of life, has its authority confined to that ſingle Community for which it was originally framed, or at the utmoſt, extends it to a few neighbouring or dependant States. The ROMAN LAW on the contrary is regarded as a CODE of UNIVERSAL JUSTICE, equally applicable to all ages and countries. Its ſalutary influence has been felt at different periods in parts of Europe the moſt remote from each other, and there is ſcarcely a modern nation which is not indebted to it for ſome of its beſt political and judicial inſtitutions. JUS CIVILE ROMANUM (ſays Gothofred) *Legum Sanctitate et Diſciplina exterarum gentium Legibus et Inſtitutis præponderat, omniaque Populorum* JURA *et* MORES *in ſe comprehendit.*[a]

[a] *In Prax. rer. civil.* Lib. 2. tit. 1.

What

What was figuratively ſaid in praiſe of the Socratic School, that its venerable FOUNDER "had brought PHILOSOPHY down from Heaven and introduced her into human ſociety" may perhaps with ſtricter truth be pronounced of thoſe who firſt thought of applying the ſpeculative wiſdom of ancient Greece to POLITICAL and FORENSIC purpoſes. This was in the happieſt manner effected by the ROMAN LAWYERS. For by conſtantly recurring to this ſource for principles of equity, to regulate the morals and direct the actions of their fellow citizens, they laid the foundation of that intimate union which in proceſs of time took place between PHILOSOPHY and LEGISLATION. They conducted HER from the PORCH to the FORUM, delivered into her hands the Sword of Juſtice, and gradually reconciled her to the buſineſs and buſtle of public life.

Thus thoſe ſublime maxims of moral and and political virtue, which, before that time, were conſidered as little better than points of controverſy for the Sophiſt or as matter of declamation for the Orator, were gradually

ally reduced into a rational Syſtem of JURISPRUDENCE, in which the arguments of the PHILOSOPHER were ſtrengthened and enforced by the authority of the MAGISTRATE, "*Quid enim eſt aliud* JUS ROMANUM, *niſi* RATIO IMPERANS *et* ARMATA SAPIENTIA, SENTENTIÆQUE PHILOSOPHORUM *in* PUBLICA JUSSA *converſæ*.[b]" It ſhould be obſerved alſo that the materials which compoſe this Syſtem were neither haſtily collected nor raſhly arranged. The Foundation of the Fabric was coeval with that of the City itſelf, but the Superſtructure required the labour of more than twelve Centuries to complete it. In other words it was "the reſult of long attention and ſober deliberation; conducted by Lawgivers of great Temper and Philoſophy; planned upon the faireſt and moſt rational Principles of Humanity; ſhaped and moulded by comparative Schemes of Polity; matured by long experience; and laſtly (by a Revolution full of Equity) as it was formed upon the beſt Models of

[b] GRAVINÆ. *Oratio De Juriſprudentiâ.*

Anti-

Antiquity, ſo has it been honoured, illuſtrated and copied by many States and People that followed after.[c]"

It will be needleſs in this place to repeat what has been ſo often and ſo ably ſaid of the benefits to be derived from the ſtudy of the ROMAN LAW. Its connection with various branches of Polite Letters, and in a particular manner with HISTORY and CRITICISM muſt be obvious to all who are converſant with ancient learning, and has been beautifully exemplified in the Works of BYNKERSHOEK, HEINECCIUS, GRAVINA, and TAYLOR; where from a happy application of juridical knowledge to the illuſtration of the Manners, Cuſtoms and Language of remote Ages, the fulleſt light is thrown upon many points of Claſſical Antiquities, which, but for this circumſtance muſt have remained in their original obſcurity.

[c] TAYLOR. *Elements of Civil Law.* Pref. P. 4.

*Magd. Coll.* OXON.
May 3. 1785.

A CHRO-

A

# CHRONOLOGICAL VIEW

OF

# ROMAN LAW.

ROME under the regal government had but few laws. She depended principally upon the will of her Sovereigns, both for political and judicial regulations. A. U. C.

Her chief legiſlators for the firſt three centuries were Romulus, Numa, Tarquinius Priſcus and Servius Tullius; and the laws enacted by theſe princes are ſuppoſed to have been ſtrongly tinctured with the manners of their reſpective countries.

According to ſome authors the laws of Romulus had reſpect chiefly to marriages, the education of children and the rights of parents.[1] His ſucceſſor added to theſe ſuch Romulus Numa 39

1 The laws of Romulus collected from Plutarch, Dionyſius, Livy, &c. and reduced under the twelve following heads, are illuſ-

A. U. C. as took cognizance of murder, mutual compacts, funerals and the cultivation of lands. But the chief aim of this pious king appears to have been the regulation of religious ceremonies and the eſtabliſhment of ſacred inſtitutions. The Feciales, a college of military prieſts, was erected by him; and from the ſalutary tendency of his inſtitutions he has been with great

illuſtrated by Andreas Cirino in the 58th Chapter of his *Variæ Lectiones de Urbe Roma*: from whence it appears that domeſtic regulations, though perhaps the principal, were not the only object of Romulus's legiſlation. I. Deos patrios colunto, externas ſuperſtitiones aut fabulas ne admiſcento. II. Ne quid inauſpicato publice gerunto. III. Nocturna ſacrificia pervigiliaque amoventor. IV. Rex ſacrorum præſes, Legum cuſtos eſto. Judicia exerceto. Belli imperium habeto. V. Patres ſacerdotia ac magiſtratus capiunto, plebeis patroni ſunto. VI. Populi ſuffragia ſunto. Magiſtratus creanto, leges ſciſcunto, pacem bellumque jubento. VII. Mænia ſancta exiſtimento. VIII. Uxor farreatione viro juncta in ſacra et bona ejus ventio, jus devortendi ne eſto. IX. Si ſtuprum commiſit, aliudque quid peccaſſet, Maritus judex et vindex eſto, deque eo cum cognatis cognoſcito. X. Temetum mulier ne bibito. XI. Quod natum erit parentes tollunto, monſtroſos tamen partus ſine fraude exponi fas eſt. XII. In liberos ſuprema patrum auctoritas eſto, venundare, occidere liceto.

pro-

propriety called by ſome, the founder of the Roman law.[2] A. U. C.

The laws of Servius Tullius relate to contracts, uſury and impriſonment for debt. They were for the moſt part collected from the laws of his predeceſſors, which ſo early as his reign had begun to fall into neglect; and it is for the great zeal which Servius ſhewed in re-eſtabliſhing their loſt authority, that he is called by Tacitus "præcipuus "*ſancitor* legum." Servius Tullius. 175

The whole of the *leges regiæ*, together with the *mores patrii*, which conſtituted part of the Roman polity during the regal ſtate, were about the time of Tarquin the laſt king of Rome collected into a body Jus civile Papyrianum 246

2 It is of this king that Virgil ſpeaks in the ſixth Æneid.

" Quis procul ille autem ramis inſignis Olivæ
" Sacra ferens? noſco crines incanaque menta
" Romani regis; *primus* qui *legibus urbem*
" *Fundabit*; Curibus parvis et paupere terrâ
" Miſſus in imperium magnum."

Lib. 6. v. 808.

A. U. C. by Sextus Papyrius.[3] This collection was called after his name, "non "quia Papyrius de ſuo quicquam "ibi adjecit, ſed quod leges ſine "ordine latas in unum compoſuit" and is conſidered as the ſource of the Roman *written* law.[4]

244--304 For about ſixty years after the

3 "Ejectis regibus, Papyrius ſacras omnes profanaſque le- "ges a regibus latas in uſum publicum deduxit, conſcripto "codice, quem poſtea *jus civile Papyrianum* appellarunt — "Hunc autem Papyrii librum ad ætatem Pomponii (*the mid- "dle of the ſecond century*) perveniſſe facile ex eo conſtat." Forſter. Lib. 2. cap. 2. Hiſtoria juris civilis Romanorum. A fragment of this work is preſerved in Macrobius Saturnal. Lib. 3. cap. 11. and the laws of which it was compoſed may be collected among many other treatiſes of the ſame nature, from Urſinus's compilation of the *leges regiæ*, publiſhed at Rome, anno 1583.

4 "Profectæ leges regiæ potiſſimum ſunt a Romulo, Numa "et Servio Tullio, quorum primus *naturæ jus* extulit; alter "*jus gentium* expreſſit; poſtremus *jure civili* conſtituendo vaca- "vit." Gravina de ortu et progreſſu juris civilis. Cap. 31. This has been conſidered by ſome as little better than a piece of ingenious refinement. If it be underſtood however as referring only to the character and tendency of theſe ſeveral laws and not to the intention of the legiſlators in framing them, the obſervation perhaps may not appear altogether ill founded.

ex-

expulsion of her kings, Rome is A. U. C.
supposed to have been governed "incerto magis jure quam per latam legem." i. e. by such of the *leges regiæ* as had not been abrogated, and by the *mores patrii.* In cases where these were deficient, the will of the consuls (as that of the kings had formerly been) was substituted in the place of law. At length however it was found necessary to have some established system of polity in order that (as Livy expresses it) "Quod populus in se jus dederit, eo consulem usurum; non ipsos libidinem ac licentiam suam pro lege habituros." This proposal had long been a subject of heavy contention between the patrician and plebeian parties, not only with regard to the expediency of the measure itself but to the mode also of putting it in execution. It was at last agreed to send 301
deputies into Greece with a commission to examine the laws and institutions which prevailed in that country, and to make a selection of

such

A. U. C. ſuch as ſhould appear beſt calculated to form a ſyſtem for the regulation of the Roman common-
303 wealth.[5] At the end of little more than two years they returned, and ten perſons (called decemvirs) were appointed for the purpoſe of compiling and digeſting the materials. In doing this they adopted many of the *leges regiæ* and *mores patrii*, and connecting them with the new laws, formed a body of juriſprudence, divided into *ten* diſtinct *tables*. In the courſe of another year *two* more tables were added. The work being then thought complete, was expoſed to public view in the forum, received the appro-
XII Tab. bation of the people, and was from
304 that time conſidered as having in the fulleſt extent the force of law, and as conſtituting the baſis

5 "Miſſi legati Athenas—Juſſique inclytas leges Solonis "deſcribere et aliarum Græciæ civitatum inſtituta, mores, "juraque noſcere." Liv. Lib. 3. And Florus thus ſpeaks of the event of this embaſſy "Allatas è Græciâ leges decem "principes lecti, jubente populo, conſcripſerant, ordinataque "erat in duodecim tabulis tota juſtitia." Lib. 1. cap. 24.

upon

upon which the vaſt fabric of the *Roman civil law* was gradually erected.[6] The compilation is mentioned under various names by ancient authors, ſuch as *jus priſcum, jus decemvirale, tabulæ peccare vetantes*, by the civilians *lex antiqua, jus civile, jus antiquiſſimum*, and by the Greek juriſts *dodeca-delton*, though its more general title has always been *jus duodecim tabularum*.[7] [A] A. U. C.

We now proceed to conſider the ſeveral branches of Roman polity

6 "Fuit et Hermodori Epheſii in comitio legum quas "decemviri ſcribebant, interpretis ſtatua publice dicata." Plin. hiſt. nat. lib. 34. cap. 5. This Hermodorus, we are told, was employed by the decemvirs to explain the Greek laws from whence the tables are compiled, and ſome are of opinion that many new laws were adopted at his ſuggeſtion.

7 For an account of this eſtabliſhment of Roman juriſprudence, I refer the reader to the ancient hiſtorians, and for more particular information, to the "Quatuor fontes juris ci-"vilis, by Jac. Gothofred." Franc. Balduin's commentary on the XII tables, in two books; edit. Paris, ann. 1552.—The ſecond book of Gravina's "orignes juris civilis" and the Dodeca deltos of Ritterſhuſius, publiſhed at the beginning of the laſt century.

which

A. U. C. which aroſe during the exiſtence of the commonwealth.

*Leges*, *Plebiſcita*, and *Senatus conſulta* were indeed ſeparate channels of law before the inſtitution of the twelve tables, and were diſtinguiſhed by the following characters.

Leges

The firſt were, as Juſtinian defines them, "Quæ populus Romanus Senatorio magiſtratu interrogante, veluti conſule, conſtituit." They are laws in the ſtricteſt ſenſe, and may be conſidered as a generic term applicable to the ordinances of every ſpecies of legal aſſembly; "generale juſſum populi aut plebis rogante magiſtratu." Such as theſe were coëval with the foundation of the city, and the majority of the laws fell under this deſcription.

Plebiſcita

The ſecond ſort were, according to the ſame Emperor's definition, "Quæ plebs plebeio magiſtratu interrogante, veluti tri-
260. "buno, conſtituit." Before the creation of tribunes or plebeian magi-

magiſtrates this ſpecies of law did not exiſt, and at its firſt inſtitution was very confined in its influence; the Patricians did not conſider themſelves as bound by it, neither properly ſpeaking was it law, in the ſtrict ſenſe of the word; for it appears to have owed its efficacy to compact and connivance rather than to authority. By the *Lex Horatia* however it was determined, "ut quod tributim *plebs* juſſiſſet, "*populum* teneret." The *Lex Publilia* afterwards paſſed to alter the word *Populum* to *Quirites*; and the Patricians having attempted to evade the foregoing act, it was finally ratified by the *Lex Hortenſia.*[7]

A. U. C. 306; 415; 467

The laſt of theſe three ſpecies of law was defined to be "Quæ ſenatus jubet atque conſtituit." But when a negative was put upon any

Senatus-conſulta

7 "Neque ſolum illa *plebiſcita* ſunt quæ plebs in diſcordiâ "fecit; ſed ut omnia quæ Tribunus rogabat et ſciſcebat non "*Hortenſiâ* ſolum ſed aliis quoque legibus *Horatiâ* et *Publiliâ* "juſſum eſt, omnes tenerent—Illud itaque inter *plebiſcita* et "*cæteras leges* intereraṭ quod hæc a *plebe*, illæ a *populo* rogabantur. Poſt *legem Hortenſiam* ſine controverſiâ *plebiſcita* pro *legibus* haberi cœperunt." ANT. AUGUSTINUS *de legibus.* cap. 3.

B de-

A. U. C. decree of the Senate, it was no more than *Senatus Auctoritas*, and was not regarded as law till ratified by the people. The constant
347--415 struggles between the Patricians
445--687 and plebeians necessarily caused great variations in their authority. Accordingly we sometimes find the conclusions of the people carried to the Senate for ratification, and at other times the people determining upon the decrees of the Senate.[8]

Such were the characters of the *three great constitutional sources* of the *written* law till the extinction of the republic.[9]

The branches of the Roman

8 "Sub regum administratione nil actum sine Senatus-consulto fuit: adeo ut nec populi scita sine Senatus-consulto rata haberentur; quamvis postea versa ratio fuerit auctâ populi potentiâ qui non modo lege VALERIÂ *judiciorum capitalium potestatem* accepit, institutâ provocatione ad populum; sed tribunitiis contentionibus obtinuit, *ut omnia Senatus-consulta populi judicio comprobarentur*." GRAVINA *de Romano imperio*. Cap. 14. It is to be observed that the *Jus Gladii*, which this *Valerian* law transferred to the *people*, was originally in the hands of the Kings, and afterwards of the Consuls. It was at last delegated to an officer called *Quæstor Parricidii*. LIV. Lib. 1. cap. 48. DIG. l. 1. tit. 16. 23.

9 In various parts of GRÆVIUS's collection of Roman Antiquities, treatises occur, which may be usefully consulted upon this

law, which come next under consideration, are those which properly constitute the *Jus civile* or *Jus non scriptum* according to the definition of Pomponius, "*proprium enim*, "says he, *jus civile* illud est quod "*sine scripto* in solâ prudentum interpretatione consistit." A. U. C.

The laws of the twelve tables were not so clear and explicit but that they admitted a variety of interpretations and constructions; these necessarily in time produced embarrassments; it was customary therefore for men learned in the law to form themselves into societies, for the purpose of elucidating ambiguous questions and giving disputed points a determinate meaning. "Legibus latis decemviralibus necessaria fuit *Fori* "*Disputatio*." The opinions dedivered in these forensic disputations were dignified with the name of *regulæ juris*, and answer to our

Fori disputationes.
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this subject; there are however two authors who deserve particular attention. PAULUS MANUTIUS *de legibus Romanis* and ANTONIUS AUGUSTINUS *de legibus*, with the notes of FULVIUS URSINUS, both in the 2d vol. of this noble work.

A. U. C. idea of precedents and reports.[1] They paſſed into law by acquieſcence only, and though in point of antiquity they rank before the *Reſponſa Prudentum*, yet from th mode in which they were delivered, they are looked upon as of inferior note.[2]

When the buſineſs of the law became more laborious and honourable, theſe private ſocieties were converted into public ſchools, and the opinions there delivered were called *Interpretationes*, or *Reſponſa Prudentum*.

Reſponſa Prudentum

500 Tiberius Coruncanus was the firſt public profeſſor in this line; "princeps *publicam* juris civilis *pro-*

1 It is to the deciſions founded upon theſe *juridical diſputations* that civilians allude when they uſe the following terms, which at the ſame time ſeem ſtrongly to mark the diſtinction between Jus *ſcriptum* and Jus *non* ſcriptum; "*Veteribus placet. Vulgo traditum eſt—placuit prudentioribus. Receptum eſt propter neceſſarium Uſum. Ita prudentes hoc interpretati ſunt,*" terms which conſtantly occur in the Roman law books. The *regulæ juris* conſtitute the laſt title in the Pandects. Lib. 50. tit. 17. *De diverſis regulis juris.*

2 Theſe forenſic Diſputations, were collected together in ten books, by Ulpian, and alſo by Tryphonius in twenty.

"*feſſionem*

"*fessionem*, est ingressus" says Gravina,[3] and he was followed by M. Cato, Brutus, Scævola, Mucius Tubero, Trebatius, Sulpitius, and many other able Civilians, of whom we find honourable mention in various parts of Cicero's works. [B] From the opinion which the people entertained of their abilities, these determinations were usually admitted into the body of the law, "Influxerunt in edicta magistratuum "atque decreta principum; itaque "duritiem perdomuerunt vetusti "ac directi juris;" and this is the reason, it has been observed, why in the Roman system many things are to be found, which may be looked for in vain in the original tables and other codes; besides, as the opinions of these lawyers usually bore the complexion of the philosophy which they professed, it produced in process of time no little confusion, and rendered the A. U. C.

3. Tib. Coruncanus lived at the time of the first Punic war, and was the first plebeian who ever enjoyed the high rank of Sovereign Pontiff.

deci-

A. U. C. decisions in the courts extremely vague and often incongruous.[4] [C]

Jus Honorarium *Jus Honorarium*, another species of law, was so called because founded upon the edicts of magistrates *qui honores gerebant*. It first proceeded from the custom of the

1st Prætor 387 *Prætors*,[5] who when they entered upon office, published and exhibit-

2d Prætor, or Prætor Peregrinus 508 ed in the forum certain forms and rules by which they intended to administer justice; these were known by the title of *Leges Annuæ*; but if (as it sometimes happened) they were transferred from one magi-

4 It was to counteract this growing evil that the Emperor Theodosius framed that title in his code *De responsis pru- " dentum.*" (Cod. *Theod.* Lib. 1. tit. 4. edit. *Gothofred.* 1665.) and was also Justinian's object in the title of his code *De veteri jure enucleando.* Lib. 1. tit. 17. Upon the subject consult Jac. Rævardus *de auctoritate prudentum*, especially cap. 14, 15, & 16.

5 "Confluentibus ad urbem exteris, increbescebant in diem " peregrina negotia; quibus expediendis cum *Prætor Urbanus* " minime sufficeret, creatus fuit, *Prætor alter*, qui *jus redderet* " *inter cives et peregrinos*, unde duplex erat in urbe jurisdictio " prætoria; majorem autem et potestate et dignitate urbanam " peregrinâ fuisse multis ex antiquitatis vestigiis elucet." Grav. *De ortu*, &c. cap. 35.

strate

ſtrate to another, they were called *Edicta tranſlatitia.* It was not unuſual for the Prætors to ſwerve from their own edicts, till a law was paſſed which rendered them perpetual, and obliged them to adhere to their firſt eſtabliſhed rules.[6] From that time the prætorian edicts acquired conſiſtency and influence under the title of *Jus Prætorium*, and were illuſtrated with comments and interpretations by the ableſt lawyers in the time of Cicero.[7] [D] It is to be obſerved, that under the general denomination of *Jus honorarium* were ranked all the edicts and forms preſcribed by the Con-

A. U. C.

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Jus Prætorium

6 Propoſed by C. Cornelius, tribune of the people, and frequently called "Lex Annua," to diſtinguiſh it from the perpetual edict of Adrian. CICERO *in verrem.* Lib. 3.

7 The *Jus Prætorium* is deſcribed by Papinian to be "Quod "Prætores introduxerunt *adjuvandi*, vel *ſupplendi*, vel *corri*-"*gendi* juris civilis gratiâ propter utilitatem publicam." And Cicero draws its character in the following paſſage "*Con*-"*ſuetudinis* jus eſſe putatur id quod *voluntate omnium ſine lege* "*vetuſtas* comprobavit. In eâ autem *jura* ſunt quædam ipſa "jam *certa propter vetuſtatem:* quo in genere et alia ſunt multa "et eorum *multo maxima pars*, quæ *prætores* edicere conſueve-"runt." De Invent. Lib. 2. cap. 22.

ſuls,

A. U. C. ſuls, Cenſors, Quæſtors, Tribunes, Dictators and Ædiles, both curule and plebeian, during the term of their ſeveral adminiſtrations. But none of theſe acquired the title of *Jus civile ſcriptum*, differing from it in the ſame manner as *Common Law* from *Equity*.[8]

Legis Actiones

*Legis*, or *Legitimæ Actiones*, were forms of proceſs in conducting any forenſic buſineſs, "quaſi commer-"cii forenſis inſtrumenta," and reſemble the cuſtom and mode obſerved in our courts when the parties join iſſue.[9] The Pontifical College had the ſole conduct of

8 GRAVINA, *De ortu*, &c. cap. 35 & 36.

9 STRUVIUS tells us "Legis Actiones ſunt de iis, quæ eâ "lege comprehenſa erant *certæ* et *ſtatæ* quædam atque *ſolennes* "*formulæ* a prudentibus compoſitæ." Syntag. Juris. p. 36. And HEINECCIUS calls them "*Certi* exercendi juris *ritus*, *cer-*"*tæque verborum conceptiones et formulæ*, quibus neglectis, ſuſ-"ceptum quodvis civile negotium irritum habebatur." *Proœm. Antiquit. Roman. Juriſprudentiam illuſtrantium.*

It is to theſe perplexed forms of juridical language that Cicero alludes, when writing to Atticus he ſays "Et quod ad te "de decem legatis ſcripſi, parum intellexti; credo quia διὰ "σημείων ſcripſeram." Ad Attic. Lib. 13. Ep. 32. And again more plainly in another work "Ita et tibi Juris conſultus ipſe

per

these matters, and by keeping the mysteries of the law confined to their own body and a few patrician families, they were looked up to by the people as oracles. Appius Claudius at last having, as some pretend, digested the confused mass of the *Legitimæ Actiones* into order for his own satisfaction, his secretary, Cneius Flavius, secretly procured a copy of them, and exposed them to public observation in the forum. "Clam jus civile, says FORSTER, in pontificum penetralibus repositum furatus est et evulgavit."[1] These tables not only explained the juridical forms, but prescribed the terms also, or *dies*

A. U. C.

Jus civile Flavianum 449

"per se nihil nisi leguleius quidam cautus et acutus, *præco* "*actionum, cantor formularum, auceps Syllabarum.*" De Oratore, Lib. I. In the Oration for Muræna he is very full on this topic and contemptuously asks "Dignitas in tam tenui scientia "quæ potest esse? res enim sunt parvæ, prope in singulis lit-"teris atque in interpunctionibus verborum occupatæ."

1 Cicero, in the Oration just quoted, is very severe upon the affected, mysterious air, which the ancient lawyers adopted in their pleading, and says, in allusion no doubt to the publications of Flavius and Ælian, "Ineptiis fucata sunt omnia,

C "quæ

A. U. C. *fasti*, the days of pleading in the courts of juftice. This gave, we are told, no fmall offence to the great families in Rome, whofe dignity was confidered as leffened by this communication; they accordingly introduced new forms and ceremonies into the law, ftill more myfterious than the former; thefe however were, after a few years,

Jus civile Ælianum 553

collected by Caius Ælius, who following the example of Flavius, publifhed a fecond formulary; and many fubfequent publications of this fort are to be met with in the Digeft. "Atque hæc juris civilis "portio, nempe *jus civile Flavianum* "*et Ælianum*, itemque *interpreta*-"*tiones prudentum* proditæ e re "nata quas *fori difputationem* ap-"pellarunt fub prifcæ jurifpruden-"tiæ nomine comprehenduntur.[2]

"quæ dum erant occulta, neceffario ab iis, qui ea tenebant "petebantur; poftea vero pervulgata, atque in manibus jac-"tata et excuffa, inaniffima prudentiæ reperta funt; fraudis "autem et ftultitiæ pleniffima."

2 Grav. *De ortu*, &c. cap. 33. Neither of thefe works is extant, but a very ample collection of juridical forms may be feen

Another ſpecies of law belonging to the Romans was *Jus Pontificium*, or eccleſiaſtic law, called alſo *Jus ſacrum*, *Jus pontificiale*, *Jus religionis*, and diſtinguiſhable from *Jus legitimum*, or temporal law. The exerciſe of it reſided in the pontiffs, or college of eccleſiaſtical judges, inſtituted by Numa, and conſiſting originally of *four* members, to whom were afterwards added *four* more, and *ſeven* in addition to theſe by Sylla, which laſt however were diſtinguiſhed from the original number by the inferior title of *Pontifices minores*. At the head of this college was the *Pontifex maximus*, a title and office which the emperors themſelves thought it an honour to be inveſted with,[3] and it accordingly

A. U. C.
Jus Pontificium

453--672

ſeen in BRISSONIUS's book *De formulis et ſolennibus populi romani verbis*. Where alſo the reader will find particular information reſpecting the religious, military, and domeſtic ceremomonies of ancient Rome.

3 "Sane majorum hæc erat conſuetudo ut *rex* eſſet etiam "*ſacerdos* vel *pontifex*; unde hodieque *imperatores* dicimus *pon*-"*tifices*." SERVIUS *ad Æneid*. Lib. 3. v. 268.

A. U. C. appears that for many centuries they enjoyed the ſupremacy in all civil as well as religious matters.[E] Their buſineſs related principally to adoptions, marriages, teſtamentary and ſepulchral offices, oaths, vows, conſecrations, digeſting the annals, regulating the calendar, appointing *dies faſti et nefaſti*, and preſcribing the rules and forms of juridical proceedings.[4]

Such then were the various parts of which the Roman law appears to have been compoſed during the age of the *commonwealth*; ſuch alſo was the *character* of each diſtinct part and the *order of time* in which it ſucceſſively grew out of the *fundamental* code of the XII tables.

I cannot perhaps cloſe the foregoing account better than in the words of POMPONIUS, who concludes the firſt part of his *Enchiridion*

4 The fulleſt information upon this ſubject may be gathered from JAC. GUTHERIUS *de veteri jure pontificio* and ANDREA BOSIUS *de pontificatu maximo imperatorum romanorum*, both in the 5th vol. of GRÆVIUS. See alſo the ſecond book of CICERO *de legibus*.

*chiridion* (which treats *De origine juris*) with the following recapitulation.

"Ita in civitate noſtrâ aut *jure* id eſt, LEGE "conſtituitur, aut eſt proprium JUS CIVILE, "quod *ſine* ſcripto in ſolâ PRUDENTUM IN- "TERPRETATIONE conſiſtit, aut ſunt LEGIS "ACTIONES, quæ *formam agendi* continent, "aut PLEBISCITUM quod *ſine auctoritate pa-* "*trum* eſt conſtitutum aut eſt *Magiſtratuum* "*edictum* unde JUS HONORARIUM naſcitur, "aut SENATUS CONSULTUM quod *ſolum ſe-* "*natu conſtituente* inducitur."[5]

The following table, in which theſe laws are arranged in their natural order, may perhaps convey a clearer idea of the ſubject than could be obtained by any other mode of diſtribution.

5 DIG. Lib. I. tit. 2.

JUS

JUS SCRIPTUM

*Jus legitimum*[6]—vel *publicum*—*Jus ſacrum* vel *Pontificium*

Leges

*Jus civile Papyrianum*—*XII Tabulæ*

*Senatus conſulta*—*Plebiſcita*

JUS NON SCRIPTUM

*Fori diſputationes*—*Reſponſa prudentum*

Legis Actiones

*Jus civile Flavianum*—*Jus civile Ælianum*

*Jus Honorarium*[7]

*Jus Prætorium*—*Leges Cenſoriæ*—*Ædilitiæ*

6 It is not without authority that I have diſtinguiſhed the *temporal* from the *eccleſiaſtic* law of the Romans, by the word *legitimum*. CICERO ſays, "et *legitimo* et *pontificio* jure quærat." *Pro Domo*, §. 14. And again, in the ſame Oration, "Perturbatis *ſacris*, jure quiritum *legitimo* tutelarum et hæreditatum relicto, factus es ejus filius contra fas."

7 By ſome writers a diſtribution of a different kind has been adopted, in which the *Reſponſa* and the *Jus Honorarium* are ranked under JUS SCRIPTUM; but the arrangement I have choſen, ſeems juſtified by the DIGEST. Lib. 1. tit. 2. wherein they are placed under the head of "Jus quod *ſine* ſcripto venit," the rank they certainly held till Auguſtus increaſed their authority.

From

From theſe ſources proceeded all thoſe ſalutary laws which were upon various occaſions enacted by the different magiſtrates of the ſtate; and thoſe beneficial regulations by which both the religious and civil rights of every Roman citizen were for many ages inviolably maintained. It does not enter into the plan of this Epitome to ſpeak at large on theſe particular laws, and a bare enumeration of their titles would anſwer no uſeful purpoſe whatever. I therefore refer the reader who wiſhes for information on this head to ſome excellent writers upon the ſubject, in the 1ſt and 2d Vol. of GRÆVIUS's *collection of Roman antiquities*, to the 3d book of GRAVINA's *Origines juris civilis*, " de legibus et " Senatus-conſultis," and to ERNESTI's *index legum* prefixed to his *Clavis Ciceroniana*.[8] It may not however be amiſs to mention a general diſtribution which AUGUSTINUS in his book on the Roman laws lays down to faci-

8 A catalogue of thoſe modern writers, who with a laudable induſtry have collected together the fragments of many particular laws, and by their extenſive comments upon them have illuſtrated various intereſting points of Roman antiquities, may be ſeen in DR. TAYLOR's *Elements of civil law*. Art. Lex. p. 196.

litate

litate the knowledge of this intricate ſubject. He thinks the whole maſs of laws may be referred to ſome one of the following claſſes.

" Aut enim—1. ad ſacras res pertinent—
" 2. Aut ad magiſtratus—3. Aut de comitiis
" —4. De indiciis—5. De aliis rebus civi-
" libus latæ ſunt—6. Aut ad mores—7. Ad
" omnium hominum crimina—8. Ad ſedi-
" tioſos legiſlatores—9. Ad rem militarem
" ſpectant." *De legibus.* Cap. 5.

To theſe ages of independence, in ancient Rome, ſucceeded a government of a ſomewhat different complexion under the Emperors. The ſyſtem of juriſprudence, which prevailed during the commonwealth, neceſſarily received ſome alterations. Theſe I ſhall now proceed to conſider in as regular chronological order as the ſubject will permit.

A. U. C. Some are of opinion, that upon the acceſſion of Auguſtus, every other legiſlative power in the ſtate was abſorbed in the will of the

Lex Regia emperor, and that the *Lex regia* took place of every other ſpecies of law.

law. The fact appears to be thus; A. U. C.
Augustus did at different times re- 725--766
ceive certain grants of public administration from the hands of the senate and people; by the last of which he became completely invested with all civil power;[9] though 727
indeed he was eight years before this last grant, *Sovereign* in the truest sense of the word, declared AUGUSTUS, and *Legibus solutus*.[F]

The power thus *gradually* conferred upon this prince, was bestowed *at once* upon his successors by a public decree, which, though it did not obtain the title of *Lex regia* till the age of the Antonines,

9 A. U. C. 725—727—730—735. GRAVINA speaking of Tribonian's preface to the Digests, where, in the person of Justinian, he first introduces this notion of the *Lex Regia* "Cum "enim lege antiquâ, quæ regia nuncupabatur omne jus, om- "nisque potestas populi Romani in imperatoriam translata sit "potestatem" adds, that what the ambitious struggles of Cæsar and Pompey, the perfidy of the Triumvirate, the violence of the legions and the unrestrained insolence of the Prætorian cohorts could never bring to pass, the abuse and wilful misinterpretation of the *Lex Regia* effected; namely, the total subversion of civil liberty. Lib. *de imp. rom.* cap. 23, 24.

A. U. C. 725--766 appears neverthelefs to have merited that appellation on its firft eftablifhment.[1] There are others who contend that this inftrument was far from conferring abfolute power upon the emperor; that *Legibus folutus* can only mean a partial exemption, and that if ever the *Lex regia* can be taken in a defpotic fenfe, it muft be when the feat of empire was removed, and the fervile fpirit of the Greeks was ready to encourage the boldeft ftrides of imperial encroachment.[2] Which of thefe two opinions may be right, it is not now eafy to determine, and whatever may have been its

1 *At Romæ, fenatus cuncta principibus folita Vefpafiano decernit.* Tacit. Hift. Lib. 4. cap. 3. A fragment of a decree of the fenate, which confirmed Vefpafian in the full pefffion of imperial power, was found in the laft century, engraven upon copper, in the church of St. John de Lateran at Rome. TAYLOR's *Elements of Civil Law.* art. *Lex Regia.* GRUTER's *infcriptions*, CCXLII.

2 When, as GRAVINA expreffes it, the Senate was rather the *retinue* of the prince, than a neceffary portion of the government, "Conftantinopolitanum Senatum potius *Pompam* "principis, quam reipublicæ Romanæ portionem reputemus." *Lib. fingularis de romano imperio*, cap. 45.

ori-

original character, from the following description of the *Lex regia* in the institutes, its meaning and tendency at that time cannot I think, be well misunderstood. "Sed et "quod *principi placuit*,[3] legis habet "vigorem, quum *Lege regiâ* quæ "de ejus imperio lata est, *populus* "*ei et in eum omne imperium suum et* "*potestatem concedat.*"[4]

A. U. C. 725--766

Soon after the establishment of the imperial power, two sources of the original legislation at Rome, namely, *Leges* and *Plebiscita*, were abolished, and another species of law arose under the title of *Impe-*

3 "Tel est notre plaisir" in the mouth of a French king. Though BRACTON paraphrases it "Non quicquid de voluntate regis temere præsumptum est, sed quod consilio magistratuum suorum rege auctoritatem præstante et habitâ super hoc deliberatione et tractatu, recte fuerit definitum." *De actionibus*, Lib. 3. cap. 9.

4 GERARD NOODT, a very celebrated professor of civil law at Leyden, at the latter end of the last century, has written a treatise *De jure summi imperii et de lege regiâ* which has been translated by BARBEYRAC with some admirable notes, and together with his translation of a dissertation by GRONOVIUS in the same volume, will be found to afford every possible information upon the subject.

 *rial*

A. U. C. *rial Conſtitutions.* Of theſe there
725--766 are three ſeparate ſpecies, *Epiſtolæ* — *Decreta* — *Edicta*; though the refinement of ſome civilians has created many other unneceſſary diſtinctions on this head.

The moſt ſtriking difference in their general character ſeems to be, that the *Epiſtolæ* and *Decreta* were made laws at the ſollicitation of others, whereas the *Edicta* were conceived and executed moſt frequently, as it is expreſſed *ex mero motu imperatoris*.

To ſpeak more particularly of
Epiſtolæ each; *Epiſtolæ* were ſent in anſwer to ſuch as requeſted a deciſion upon any point of law or matter of controverſy, and the opinion therein given continued to be deciſive for the future, either generally or ſpecially, according to the nature of the diſpute.[5]

5 Epiſtolæ were ſometimes called *reſcripta*, and the petitions to which they referred are known under the title of *Libelli Supplices*.

The emperors in their anſwers were uſually regulated either by the opinion of ſome able counſellor, or by eſta-

A. U. C. 725--766

*Decreta* were the opinions and decisions of the emperors, when they sat (as was customary with many of them) to hear causes in the courts of justice.[6] Decreta

*Edicta* were voluntary and occasional proclamations made for some general purpose, whenever it was thought requisite by the emperor; and they were considered as universal law under the title *Lex edictalis*. Edicta

There is also another species of imperial law called *Orationes*. These were speeches made in the senate, either by the emperor himself or by his *Quæstor*, who on this occasion is sometimes called *Os imperatoris, Thesaurus publicæ famæ, Armarium legum*.[7] Orationes

blished precedents of law. The Rescripts of the emperor SEVERUS are very celebrated, and many of them are to be seen in the 12th vol. of FABRICIUS's *Bibliotheca Græca*. p. 514.

6 Paulus compiled six books of imperial decrees; principally those of the Antonines and of Severus.

7 CASSIODORUS, lib. 6. ep. 5. At what precise period this part of the *Quæstor*'s office took place we have no certain evidence. The accounts we meet with are very contradictory: some writers fix it in the reign of *Vespasian*, upon the authority

A. U. C. 725--766 Pragmatica

We read alſo in the Theodoſian code of *Pragmatica*, divided into *Juſſiones* and *Sanctiones*, the firſt of which commanded, the laſt pro-

rity of AURELIUS VICTOR, who, in his life of *Vitellius* (Veſpaſian's immediate predeceſſor) ſays, he was the laſt emperor that recited his oration to the ſenate in perſon. But SUETONIUS tells us expreſsly that the *Quæſtor* was employed in this buſineſs as early as the reign of Auguſtus. Vit. Aug. §. 65. "If (ſays CICERO) it be neceſſary for a common orator to ſpeak with dignity and elegance in order to influence the minds of his hearers, how much more do we require in him who is, as it were, the *mouth of the prince, Os principis?*" A title which we know was applied to the *Quæſtor*, in alluſion to the cuſtom of which we are ſpeaking.

But the *Queſtor* appears not only to have been employed to deliver the emperor's ſentiments to the ſenate, he had frequently the charge of *compoſing* the oration alſo; and TACITUS records *Nero* as the firſt who ever entruſted his *Quæſtor* with this commiſſion. In how honourable a light this part of the duty was regarded we may infer from many circumſtances: *Titus*, we are told, executed it under his father Veſpaſian, (SUETON *in vit. Tit.* cap. 6.) as did *Adrian* for his uncle Trajan. SPARTIAN. *in Adrian.* cap. 2. BRISSONIUS is of opinion that the office extended ſtill farther, and that every ſpecies of communication between the prince and the ſenate was occaſionally carried on by the *Quæſtor*. He obſerves alſo upon the words *Jura orationibus principum conſtituta*, which frequently occur in the law books, that this was ſaid becauſe the oration, and the decree of the ſenate conſequent upon it, were uſually

annexed

hibited the execution of certain subjects of petition from the provinces, cities and collegiate bodies in the empire. A. U. C. 725--766

Another instrument of imperial authority, occurs under the title of *Mandata*, or directions sent to the governors of towns and provinces for the regulation of their peculiar districts. All these different species of law may however be reduced to three general heads already mentioned, namely, *Epistolæ*—*Decreta*—*Edicta*. Mandata

These Imperial Constitutions were usually framed by the emperor in his *Consistory*, a kind of privy council, established by Augustus, and composed first of fifteen and afterwards of twenty members of the senate, chosen by lot, together with some eminent magistrates Consistory

annexed to each other, and used as synonimous terms. *Select. ex jur. civ. antiq.* Lib. 1. cap. 16. In GRUTER's inscriptions, Tab. 502. there is a copy from an original oration of *Claudius*, "De supplendo senatu ex nationibus exteris," still preserved at Lyons. See also COD. JUSTINIAN. Lib. 1. tit. 30. *De officio Quæstoris*.

and

A. U. C. and lawyers. Their buſineſs ori-
725--766 ginally was to diſcuſs ſuch matters as required diſpatch, or were of too trifling a nature to come before the Senate. But the *Conſiſtory* at laſt extended its juriſdiction; and at the death of Auguſtus was become a ſubſtitute for the Senate in affairs of the moſt general importance.[8]

Thus under the *Emperors* we ſee that the IMPERIAL CONSTITUTIONS took place of the *Leges* and *Plebiſcita*, and that the *Senate* was in ſome meaſure ſuperſeded by the CONSISTORY; in other reſpects the ſources of the Roman law will be found the ſame as under the *conſular* government.

8 "Auguſtus decretis ſuis perpetuam firmitatem comparaturus impetravit, ut generali SCto poteſtas judicialis et publica Senatus univerſi transferretur *in conſilium illud principis*: quod ab eo tempore *S. C. condendi facultatem* accepit." GRAV. Lib. *de romano imperio*, cap. 17. This is ſomething analogous to LORD BACON's idea of the *privy council* in his time, "which had, he ſays, not a delegated but an inherent authority, and the king being there, *in Cathedrâ*, his decrees in all matters, whether general or particular, were ſettled and irrevocable." See *his ſpeech for perſuading the Houſe of Commons to receive the king's meſſages by their ſpeaker*, &c.

The

The *Reſponſa prudentum*, which A. U. C.
heretofore had no other authority 725--766
in the courts of juſtice, but what they derived from their own inherent excellence, were rendered more generally deciſive by Auguſtus, who permitted them even to controul the deciſions of the magiſtrates, and to be conſidered in future as oracles of law. But this latitude was granted only to the opinions of thoſe lawyers whom the emperor ſhould think fit to nominate,[9] and who

9 "Primus Auguſtus publicam juris-conſultis tribuit auc-"toritatem, juſſitque ut *reſpondendi facultas* non amplius *e pri-*"*vato conſilio*, ſed ex *principis beneficio* prodiret." GRAVINA *de ortu*, &c. cap. 42.

The *Reſponſa Prudentum* from this time ranked as *Jus ſcriptum*, though the degree of authority which they received from Auguſtus has been much diſputed by ſome writers, who pretend that this emperor only permitted them to be law in the particular caſe to which they ſhould be applied, and that they were not conſidered as general precedents till the time of Juſtinian: but this ſeems to be confuted in an inſtance of their authority given by Juſtinian himſelf, who tells us that Auguſtus having called together ſome of the moſt eminent lawyers, conſulted them concerning the legality of codicils, and upon their opinion ſolely eſtabliſhed the uſe of them, "Poſt quæ tempora nemini "dubium erat quin Codicilli jure optimo admitterentur." §. 1. *inſtit. de Codicillis.*

A. U. C. 725--766

from this privilege are diſtinguiſhed both in the Digeſts and the Code, by the appellations of *Juris auctores* and *Juris conditores*, titles which they never before had preſumed to adopt.

Sabinians and Proculeians

When legal opinions became ſo highly reſpectable, a variety of controverſies aroſe, which in a ſhort time divided the profeſſors of the law into ſects and parties. Two of theſe, more famous than the reſt, were known by the names of *Sabinians* and *Proculeians*. The former called after MASURIUS SABINUS, and having at its head *Atteius Capito*, profeſſed to adhere to the ſtrict text of the ancient law, and to oppoſe all gloſſes and innovations whatever.[1] *Antiſtius Labeo* was the leader of the other ſect, which received its name from PROCULUS, an eminent teacher of law. His tenets were directly oppoſite to thoſe of the Sabinian ſchool; for he ad-

1 " *Atteius Capito* quæ a majoribus tradita fuerant conſtan-" tius tenebat et verbis atque inſtitutis hærebat firmius." GRAVINA *de ortu*, &c. cap. 45.

mitted

mitted of great latitude in interpretation and commentary: this gave room for a variety of conceits, and rendered the practiſe and opinions of his followers very undefined.[2] Theſe two ſects continued to flouriſh till the reign of Antoninus Pius, when a ſet of mediators appeared; yet their interpoſition was not quite effectual, and the diſputes (though with leſs violence) were at intervals continued almoſt to the days of Conſtantine.[3] A. U. C. 725--766

2 "*Labeo* mentis quodam ardore ſublatus indulgebat ingenio, innixuſque propriæ ſapientiæ, ſibique amplius permittens provehebatur in altum et novitate ducebatur. Itaque "plura intulit, vel ignota vel intentata veteribus." GRAVINA, loc. cit. As a beautiful illuſtration of GRAVINA'S chapter *De juris-conſultorum ſectis*, I refer my reader to MASCOVIUS'S treatiſe *De ſectis in jure civili*, edit. Lipſ. 1728. LAMBECIUS in the Appendix to his *Prodromus hiſtoriæ literariæ* has drawn out a table of theſe two ſects as they ſpread, till the age of Adrian. p. 232. edit. Fabricii, 1710.

3 "Hujus diſcordiæ plura veſtigia ſuperſunt in libris juris; "multaſque retinemus reliquias confligantium inter ſe ſcriptorum, quas Tribonianus ſatis cavere non potuit quamvis "Juſtinianus miram locorum concordiam polliceatur." GRAV. loc. cit.

From the foregoing detail it appears that out of the laws of the XII Tables had arisen a confused and variegated mass of jurisprudence; which, having never been properly reduced under any regular system, had rendered the study of the law extremely irksome and laborious. This confusion was considerably increased by these contending sects, whose whole endeavour it seems to have been to load a science, already too much encumbered, with unnecessary difficulties, and to perplex it with sophistical and often contradictory definitions. To the *Responsa Prudentum* these disputes were particularly injurious, and were the cause that soon after the death of Augustus the authority of this branch of law was considerably diminished: indeed, under the emperor CALIGULA, it may be supposed to have received an effectual check, for he publickly declared "Se mehercule effecturum ne quid respondere possent præter "eum."[4] Which seems to confine the right of delivering juridical opinions to the emperors only. The *Responsa* however recovered their original splendor from the reforming hand of the emperor ADRIAN, who, as we find in the

4 SUETON. in vit. Calig. c. 34.

the Digeſt, decreed "Ut ſi quis fiduciam ſui "haberet delectari ſe, populo *ad reſponden-* "*dum* ſe præpararet."[5] The conſtitutions of THEODOSIUS and afterwards of JUSTINIAN completely eſtabliſhed their authority.[6]

During the latter ages of the republic many fruitleſs or imperfect attempts had been made to remedy the great inconvenience which aroſe from the prodigious increaſe of the Roman laws, and many projects were formed for throwing the ſcience into ſome clear, well-digeſted arrangement; for retrenching what was ſuperfluous and elucidating what was obſcure. It was reſerved for the EMPEROR JUSTINIAN to accompliſh this noble and uſeful work; and in his admirable compilation to tranſmit to future ages a model of legiſlative wiſdom.

Having now treated of all the various ſpecies of laws, as they were *ſeparately* received, either in *conſular* or *imperial* Rome, I ſhall next proceed to conſider the ſubject in its *collective* form, and ſhall endeavour diſtinctly

5 Lib. 1. tit. 2. l. 2.

6 The claſſical reader will find many elegant obſervations upon the *Reſponſa Prudentum* in DR. TAYLOR's *Elements*, p. 219, et ſeq.

to

to mark the particular changes which took place in Roman juriſprudence, at each ſtage of reformation, till the period of its final extinction.

And here it may not be amiſs previouſly to mention that many civilians (though they diſagree with reſpect to the mode of dividing the ſubject) have been fond of adopting a general diſtinction of the Roman civil law into the three following periods, namely, *Juriſprudentia Antiqua, Media* and *Nova*. The The firſt has uſually been conſidered as the ſtate and complexion of juriſprudence, *from the foundation of Rome, to the æra of the XII Tables*. The ſecond, as the period *between the æra of the XII Tables and the reign of the emperor* ADRIAN, when the imperial conſtitutions took place of all other law "radiabant "ſolummodo Imperiales Conſtitutiones," and when the third period or *Juriſprudentia nova* commenced and *continued to the age of* JUSTINIAN. GRAVINA differs very materially from moſt others in adopting *four* periods.—Juriſprudentia Antiqua *from the XII Tables to the age of* CICERO.[7]—Juriſprudentia Media

7 "Aſpera quidem illa tenebricoſa et triſtis non tam in "*æquitate* quam in *verborum ſuperſtitione* fundata." GRAV. *De ortu*, &c. c. 46.

*from*

*from the time of* Cicero *till the reign of* Augustus,[8] when Jurisprudentia Nova arose, and continued to Justinian's reformation, and then made way for the last period, or Jurisprudentia novissima, under which title he considers the Roman law, *from the death of* Justinian *till the expiration of the Exarchate of Ravenna*, A. D. 752. "A quo tempore, Jurisprudentia, barbarorum colluvie "mersa, usque ad Lotharium, A.D. 1134. "latuit in Italiâ."[9]

A. D.[1]

The compilations of Sextus Papyrius, of Flavius and Ælius, have already been mentioned. The attempts which we are told were made by Pompey, Julius Cæsar[2]

8 "Quæ magis *communi utilitate* quàm *potestate verborum* negotia moderaretur ductaque interpretum ac magistratuum "auctoritate, leges veteres flecteret ad lenitatem," loc. cit. The utmost extent (according to Gravina's division) of the *Jurisprudentia media* will not be much more than a century, if we reckon from the birth of Cicero, 107 years before Christ, to the death of Augustus A.D. 15. This short but interesting period may justly be stiled the *golden age* of jurisprudence.

9 Grav. *De ortu*, &c. cap. 46.

1 Agreeable to general custom I shall, in the remaining part of this Chronology, adopt the Christian Æra, the first year of which answers to the year of Rome 751.

2 Suetonius tells us of Julius Cæsar "Statuerat jus civile "ad certum modum redigere atque ex immensâ diffusâque le-

"gum

A. D. and Cicero[3] towards compiling and arranging this overgrown ſcience, were from unfortunate concurrences of the times rendered ineffec-
76 tual; and the trouble which Veſpaſian took in collecting the *Leges* and *Senatus-conſulta* was (as DR. TAYLOR juſtly obſerves) rather that of an antiquary than a lawyer. It was not in ſhort till the reign of ADRIAN, that any further compi-
Perpetual Edict. lation was made.[4] Under this em-
120 peror, JULIAN, a lawyer of high conſideration in the empire, of the

"gum copiâ, optima quæque et neceſſaria in pauciſſimos con-"ferre libros," cap. 44. a very exact deſcription of what JUSTINIAN afterwards effected.

3 AULUS GELLIUS ſpeaking of a particular application of the word *ſupereſſe*, quotes a paſſage from a book of Cicero, "Qui inſcriptus eſt, *de jure civili in artem redigendo.*" *Noct. Attic.* Lib. 1. cap. 22.

4 ADRIAN's affected imitation of the character of NUMA as delineated in the ſixth Æneid, is generally known; and DODWELL ſeems with great ingenuity to prove, that the wiſh of being conſidered, like that king, an *original legiſlator* is the true cauſe why we are deprived of the imperial laws of all this emperor's predeceſſors. See HEN. DODWELL's *Prælectiones Academicæ*, delivered from the Cambden profeſſor's chair, of ancient hiſtory, in this univerſity. *Prælect.* 7, 8, 9.

Sabinian

Sabinian sect, made a collection of *Prætor's Edicts*, and adding to them some other parts of the *Jus honorarium*, digested the whole into a regular series and system of law in fifty books. This compilation was held in high veneration, and was regarded as a standard of juridical reference till the age of Constantine, when among the other new arrangements and institutions which took place in the government of the empire, the laws did not escape the general spirit of innovation and *the perpetual Edict* lost much of its authority.[5] A. D. 120

5 It may be asked, says GOTHOFRED, how it happened that the Code of Hermogenes commences no higher than the reign of Adrian. "Putem ego quod Adrianus novæ cujusdam Jurisprudentiæ Author extiterit condito inter alia *Edicto perpetuo* cujus materia ordoque deinceps pro Cynosurâ archetypi juris fuêre, quod nobilissimum fuit corpus juris Romani et universæ jurisprudentiæ quæ nobis relicta est caput." *In prolegomena cod. Theodos.* cap. 1. The EDICT is extant only in fragments collected out of various parts of the Digests, and thrown together in as regular order as such scanty materials would admit of, by various editors of the Theodosian and Justinianean laws; especially by J. GOTHOFRED in his *Quatuor fontes juris civilis*, and by SIMON VAN LEEUWEN at the head of the Digests, in his noble edition of DION. GOTHOFRED's *Corpus Juris Civilis*. Lugd. Batav. 1663.

A. D.
Codex Papyrianus 223 The earliest compilation of Imperial Constitutions is by some attributed to Papyrius Justus, who in the reign of Severus is said to have published the constitutions of Verus, Antonine, and the two Severus's, in twenty books, which are mentioned under his name in the list of lawyers at the head of the Pandects.[6]

306 Codex Gregorianus To this succeeded two compilations of the age of CONSTANTINE THE GREAT.

The first is a collection of imperial Constitutions from Adrian 138--284 to Diocletian, including a space of about an hundred and fifty years, the work of GREGORIUS, or as some call him, GREGORIANUS, Prætorian Præfect to Constantine. The other was a continuation of this code by his cotemporary, HERMOGENES, who brought it Codex Hermogenianus

6 A Catalogue of the titles of these laws is to be found in JAC. LABITTI *Index legum omnium quæ in Pandectis continentur.* p. 268.

down

down to Constantine's reign.[7] As neither of these works were ever allowed to have any general authority, they fell entirely into disuse (except in the schools) about a century afterward, upon the publication of the THEODOSIAN CODE.[8] A. D. 284--306

Previous to this event, it is necessary to observe, that the emperor VALENTINIAN the third, perceiving the corruptions which had crept into the Roman law, not only from the promiscuous admission of all descriptions of men into that

7 "In Codice Justiniano constitutiones quædam occurrunt "post Diocletianum scriptæ et anteriores tamen epocha Codi-"cis Theodosiani. Hæ quum ex Codice Theodosiano de-"sumptæ non sint, procul dubio ex alterutro horum codicum "(Gregoriani scilicet aut Hermogeniani) in corpus Justinia-"neum migrarunt. Adeoque probabile est, Hermogenianum "Codicem pertigisse ad Annum 306." HEINECCII *antiq. roman. Jurisp. illustran.* p. 19.

8 The diligence of CUJACIUS has preserved us some fragments of these two codes: and his labours have been improved upon by SCHULTINGIUS in his *Jurisprudentia vetus ante Justinianea.* P. 681—718.

A. D. profeſſion,[9] but from the indigeſted ſtate in which the writings and opinions of the old civilians then
426 appeared, ſent a preſſing oration from Ravenna[1] to the Roman ſenate, wherein he attempts to reform the firſt evil, by clearing the public tribunals of that multitude of pleaders and aſſeſſors with which they were infeſted, and to remove the laſt, by cautiouſly ſeparating the works of the moſt eminent lawyers from the general maſs, and eſtabliſhing them under imperial ſanction as the only works of juridical authority and precedent for the future.[2]

9 " Juris civilis Scientia, quæ Manlios, Scævolas, Servios " in ampliſſimum gradum dignitatis extulerat, libertorum ar-" tificium dicebatur." MAMERTINUS *in grat. act. pro conſulatu.*

1 HONORIUS had transferred the ſeat of empire to Ravenna about 23 years before, and it continued to be the reſidence of the emperors, the Gothic kings, and the Exarchs, for more than three centuries.

2 The ſubſtance of this Oration is to be ſeen in the THEODOSIAN CODE, Lib. 1. tit. 4. *De reſponſis Prudentum*, and in JUSTINIAN's CODE, Lib. 1. tit. 14. *De legibus.*

The

The THEODOSIAN CODE was completed under the direction of the younger Theodosius, by eight of the most celebrated civilians of those times, whose names are mentioned in the first Novel of this emperor. It contains a collection of Imperial Constitutions, from Constantine to his own age, in sixteen books.[3]

A. D. Codex Theodosianus 435 or according to Gothofred 438

312--438

In the east, its authority was confirmed by a Novel Constitution, directed immediately upon its publication to Florentius, Prætorian Præfect in that part of the empire, having for its title *De Theodosiani Codicis Auctoritate*, and enacting that no Imperial Constitutions whatever, except such as were contained in that compilation, were thenceforward to be regarded as

3 " THEODOSIUS MINOR leges ad similitudinem *Gregoriani* " et *Hermogeniani*, Codice facto Constitutionum a Constantini " temporibus sub proprio cujusque titulo disposuit, quem a " suo nomine *Theodosianum* vocavit. GOTHOFRED, *prolegom. Cod. Theod.* Cap. I.

va-

A. D. 438 valid.[4] The good underſtanding which ſubſiſted between Valentinian and Theodoſius, eſtabliſhed the authority of this Code in the weſt alſo.[5] The former indeed, as appears, contributed to the collecting of it by very liberal communications.

It is undoubtedly to its favourable reception in the weſtern empire that this work is extant in ſo complete a ſtate; for it was in a great meaſure ſuperſeded about ninety years afterward in the eaſt by JUSTINIAN's compilation.[6] [G]

4 A late hiſtorian obſerves, that the clauſe in this Novel which confines the authority of all future laws to that diviſion of the empire in which they ſhall be enacted (except when voluntary adopted by the other) may be conſidered as an act which conduced more than any other to the final diſſolution of the *unity* of the Roman government. GIBBON's *decline and fall of the Roman empire.* Vol. 3. chap. 33.

5 In many of the Novel Conſtitutions, publiſhed by theſe emperors, they exchange the names of father and ſon; and Valentinian frequently declares, that the greateſt ſanction his laws could have, is that they are inſerted in Theodoſius's Code. See *Novell.* 10. 13, &c.

6 The Theodoſian Code was firſt publiſhed by J. SICHARDUS, at Baſil, in the year 1528, who added, beſides the Novel Con-

It appears then, that upon the regulations made by the two emperors, THEODOSIUS and VALENTINIAN, the ſtate of the Roman law in both parts of the empire was nearly as follows. The THEODOSIAN CODE took place of every other in point of public authority; yet in the three Academies of *Rome*, *Berytus*, and *Conſtantinople*, the works of *Gregorius* and *Hermogenes*, in conſideration of their intrinſic merit, were permitted to be ſtudied. [H] In the courts of juſtice the pleadings and deciſions were regulated by the writings of thoſe lawyers, whom VALENTINIAN in his Oration had ſelected as the moſt worthy ſuch diſtinction. Theſe were, in the firſt rank, PAPINIAN, PAULUS, CAIUS, ULPIAN, and MODESTINUS: [I] and to theſe were added ſome of the older civilians, whoſe opinions they had quoted in their works,

Conſtitutions of many ſucceeding emperors, two books of the *Inſtitutes of Caius*, ſome fragments of the *Gregorian and Hermogenian Codes*, and the celebrated treatiſes of VOLUSIUS MÆCIANUS *De Aſſe*, and of FRONTINUS *De limitibus*. It was republiſhed by J. DU TILLET, Biſhop of Meaux, in 1550, and again by CUJACIUS in 1556. But it was reſerved for the accuracy of JAC. GOTHOFRED to give a complete edition of this work, which (though he did not live to ſee it) was publiſhed in 1665, in 6 vols. folio, with learned prolegomena and an extenſive commentary.

Scæ-

Scævola for inſtance, Sabinus, Julian and Marcellus; but among all theſe, the work which ſeems to have been in the higheſt eſtimation is the *Opinions* of PAULUS.[7] For the preſervation of theſe precious relicts of ancient wiſdom, together with the Theodoſian Code, we are principally indebted to the barbarous nations who over-ran the weſtern empire; ſince either from a decided preference or for want of a complete copy of JUSTINIAN's work, they adopted (though partially perhaps) that of THEODOSIUS. [K]

It is to this æra, the reign of the younger THEODOSIUS, that we are to aſcribe that ſingular collection of law, which is known by the name of *Collectio Moſaicarum et Romanarum legum*, and which conſiſts of a ſelection from the works of the moſt celebrated civilians (eſpecially of Papinian, Paulus and Ulpian), of ſuch of the Roman laws as from their great reſemblance are ſuppoſed to have been derived from the *Moſaical* inſtitutions, comprized in ſixteen titles or chapters.

Various are the diſputes concerning the compiler of this work. Some have attributed it to LICINIUS RUFINUS, a celebrated law-

7 A Collection of theſe opinions is to be found at the end of GOTHOFRED's *Corpus juris civilis*. edit. Lugd. Batav. 1663.

yer

yer in the reign of *Alexander Severus*, and this opinion is favoured by the reſpectable authority of CUJACIUS, who ſays without heſitation (ſpeaking of a certain controverted point) "Thus thought Licinius Rufinus, *in* "*eo libro quo contulit leges Dei cum legibus po-* "*puli Romani.*"[8] PIERRE PITHOU, and MENAGE in his *Amœnitates juris civilis*[9] both reject this opinion, and agree in aſcribing it to ſome part of *Theodoſius*'s reign ſubſequent to the publication of his Code, becauſe that and the prior Codes of *Gregorius* and *Hermogenes* are referred to in this Collation, which could not have happened had the author lived in the time of Alexander Severus. MARQUHARD FREHER differs from each of theſe opinions, and aſcribes it to ſome ambitious Jew of a ſtill later period, who in order to magnify his ſect in the eye of the emperor, drew up this comparative view of the Moſaical and Roman laws.[1]

8 *Obſervationum.* Lib. 13. cap. 10. edit. Fabrotti, Paris, 1658.

9 cap. 7.

1 FREHER. Παρέργων *juris.* Lib. 1. cap. 9. The firſt edition of the *Collectio Legum*, &c. was publiſhed by the learned PIERRE PITHOU or PITHOEUS, at *Paris*, ann. 1572. and was

 repub-

A. D. From the death of the emperor
455--490 Valentinian to the fucceffion of Theodoric the Oftrogoth, the empire in the Weft continued to exhibit a fcene of confufion very unfavourable to the regular adminiftration and progrefs of the laws: perhaps we ought to except the four years reign of Majorian, whofe
458--461 zeal to reftore the fplendour of the Roman name extended itfelf (tho' ineffectually) not only to the laws,

republifhed in a beautiful edition at the fame place, ann. 1689, by F. DESMARE's, together with PITHOU's obfervations on JULIAN's tranflation of Juftinian's Code and Novels.

It was owing to the accurate diligence of PIERRE PITHOU and his brother FRANCIS, that many valuable portions of the Roman law were in the 16th century brought forth from the obfcurity in which they had for ages been buried, and by their timely labours were refcued perhaps from oblivion. PIERRE was with great juftice ftiled the *Varro of France*, and is feldom mentioned by any writers without fome mark of reverence or affection. The great CUJACIUS fays of him, among other encomiums, "Hoc agente, hoc perquirente, inftigante, docente "dicimus femper et adinvenimus aliquid." Obferv. Lib. 13. cap. 10. and in another place he pronounces him to be a man equally unrivalled in learning, diligence and focial virtues. *De Feudis*. Lib. 2. tit. 11.

but

but to the manners and public edi- A. D.
fices alſo of this declining city.[2]
A few years after his death, the
Weſtern Empire terminated with
Momyllus, and Odoacer ſucceeded 476
to the ſupreme power in Italy. He
had ſcarcely reigned fourteen years
when he was depoſed by THEODO- 490
RIC THE OSTROGOTH, who was
ſoon after proclaimed king of the
Goths and Romans.[3] The remark-
able attachment of this prince to

2 *Novellæ Majorian.* Lib. 4. tit. 6.

" Imperium jam conſul habet quem purpura non plus
" Quam lorica operit, cujus diademata frontem
" Non *luxu* ſed *lege* tegunt."

Is ſaid by SIDONIUS of this emperor with more juſtice than is uſual in this writer's panegyric. Carmen. 5. v. 1.

3 The laws and magiſtracies of Rome ſeem to have been entirely ſuſpended during the firſt years of Odoacer; for SIGONIUS tells us that in the ſeventh year of his reign, as a great mark of favour, " Odium adverſus Romanos ita mitigavit ut " *Conſulem* civitati atque occidenti *reddiderit*." *De occidentali imperio.* Lib. 15. p. 255. which is very oppoſite to the conduct of Theodoric, who, ſays the ſame writer, " Nullum Ro- " manum inſtitutum mutavit, ſiquidem et ſenatum et conſules, " patricios, cæteroſque qui fuerant in imperio magiſtratus reti- " nuit, eoſque Romanis hominibus tantùm mandavit." *Ut ſup.* Lib. 16.

A. D. the laws and cuſtoms of Rome, during an illuſtrious reign of thirty eight years, has endeared his name to poſterity. [L] His earlieſt care, after his acceſſion, was to reſtore the civil regulations and government both of the city and provinces to their original form and dignity. For
493 this purpoſe he publiſhed an EDICT, by which he enjoined the uſe and practiſe of the Roman civil law in all caſes of moment, both to his Roman and Gothic ſubjects, reſerving however to the latter a power of deciding trivial diſputes by their own laws and cuſtoms.[4]

Thus we ſee that notwithſtanding the extinction of the Roman Empire in the weſt,

4 P. PITHOU firſt publiſhed this Edict in 154 chapters, and though ſome parts of it ſavor ſtrongly of Gothic barbariſm, yet upon the whole it may be ſaid to breathe the mildneſs and equity of the Roman Codes. For a further inſight into the adminiſtration and laws of Theodoric, conſult the *five firſt books* of CASSIODORUS, which contain Epiſtles and Edicts of this emperor, directed upon various occaſions to the different officers in the empire.

the

the venerable form of Juriſprudence and Civil Polity had hitherto eſcaped the general ſhock. To the body of law as it ſtood at the deaths of Theodoſius and Valentinian were now added the *Novel Conſtitutions* of MARCIAN, MAJORIAN, SEVERUS, ANTHEMIUS, and the *Edict* OF THEODORIC.

In the Eaſt, during the reigns of Marcian, Leo, Zeno and Anaſtaſius, it had ſuffered no alteration; but the æra at laſt arrived in which the labours of all preceding compilers were to be eclipſed, and which (agreeably to the eſtabliſhed courſe of all ſublunary things) was to prove at once the meridian and the decline of Roman Law. It may be proper to premiſe that ſuch a work as that of Juſtinian was now become abſolutely neceſſary, from the great obſcurity into which the writings of the ancient lawyers were fallen.

This had been heavily complained of in the preceding century; and AMMIANUS MARCELLINUS declares that the juridical books of ancient Rome were as little known to the practitioners of his day, as the laws of the *Sicani* and the *Aruncanians*, which were, as he expreſſes it, *cum Evandri matre abhinc ſæculis obrutas multis*.

The

A. D. The EMPEROR JUSTINIAN observing to what a bulk the science had encreased, and how confusedly its parts were thrown together, resolved to reduce and digest it into some commodious form. The first step he took in this arduous undertaking was to make a compilation of the three Codes of *Gregorius*, *Hermogenes* and *Theodosius*, and affixing to these the Novel Constitutions of some succeeding emperors, he published them in the second year of his reign.

Codex Justinianeus 528

His attention was next excited to a more extensive and laborious work; to reform and compress the science of the law, for the advantage not only of the student, but of the practitioner also.[5] The com-

5 In his preface to this work addressed to Tribonian and entitled *De conceptione Digestorum*, he amply shews the necessity of such a Digest from the overgrown state of the law and the imperfect manner of teaching it. This preface and that which follows, *De confirmatione Digestorum*, are well worth consulting, not only for the matter which they contain, but for the remarkable purity of their style.

mission

miſſion was given to TRIBONIAN, a civilian of uncommon abilities, and whom Juſtinian had before honoured with peculiar marks of favour. To aſſiſt him were appointed ſixteen celebrated perſons, whoſe names are mentioned in the Preface to the Code, and who were eminent either as magiſtrates, or as profeſſors in the academies of the empire. Their buſineſs was to collect together the moſt valuable materials that could be found in the voluminous works of all the preceding lawyers, and to connect and arrange them ſo as to form a regular and complete ſyſtem of juriſprudence, "quaſi una mens eſ-"ſet (ſays GRAVINA) unaque vox, "idemque ſonus." Though to accompliſh this, the emperor allowed them ten years: the whole of the buſineſs we find was executed in three, or, as ſome aſſert, in four.[6] Hence it has happened that

A. D.

Digeſts or Pandects 533

6 "Huic autem labori Juſtinianus *decennium* præfinivit: "Tribonianus vero ſibi potius ex celeritate gloriam, quam "poſteris

A. D. 533 Tribonian is accufed of wilful neglect and inaccuracy by fome writers, and by others of ignorance and incapacity: there are indeed, who have afferted that neither he or his affociates confulted the original works which they quote, but contented themfelves with fuch fragments of them as were in common ufe, though the words of Juftinian himfelf directly preclude fuch a fuppofition.[7]

Previous to the publication of this large work, the emperor thought it would not be amifs to prepare his fubjects for its recep-

" pofteris utilitatem ex operis maturitate pariturus, *decennium* " ad *quadrennium* contraxit." *De ortu*, &c. cap. 132.

7 He fays in his Oration to the fenate and the people, that the compilation was made with great labour from an immenfe collection of rare books, whofe very titles were unknown, except to the learned in the law, and which were with much difficulty procured and arranged by the very illuftrious (*gloriofiffimus*) TRIBONIAN "quibus omnibus *perfecte lectis* congefta " funt hæc volumina."

The arguments for and againft Tribonian may be found very amply ftated by J. CHIFLET in his *Oratio apologetica de juris utriufque architectis*. Cap. 1, 2, 3.

tion,

tion, by a ſhort and ſimple compendium of its contents. "Ut rudis Animus ſtudioſi (as it is expreſſed) ſimplicibus enutritus, "facilius ad altioris prudentiæ re- "digatur ſcientiam:" an extract was accordingly made, from the works of the moſt eminent juriſts, particularly from the Inſtitutes of Caius and Ulpian which was to contain *totius legitimæ ſcientiæ prima elementa*. The whole was compriſed in four books, and publiſhed in the ſeventh year of Juſtinian's reign, one month before the Digeſts.[8] "Igitur DIGESTA fuerunt "ante INSTITUTIONES abſoluta,

A. D.

Inſtitutes 533

8 "Quibus libris, ſays GRAVINA of this work, vix ali- "quid ſuperfuit elegantius aut ſelectius, ſi quis e contextu "veterum, mixturam diſcuſſerit recentioris ætatis." *De ortu,* &c. cap. 133. For its uſe and intent ſee The Conſtitution *Tanta circa nos*, &c. prefixed to the DIGEST.

Of the various editions of JUSTINIAN's INSTITUTES, that of Mentz. anno 1472, appears to be the oldeſt: it is in one vol. folio, and handſomely illuminated on vellum. Since that time the work has been publiſhed with commentaries and illuſtrations in almoſt every country in Europe. The moſt valuable and correct edition is that of ARNOLD VINNIUS, printed

A. D. 533 " ſed confirmata, et edita poſteri-
" us."[9] The Digeſts were ſcarcely promulged, when conſidering his

at Leyden, anno 1642, and republiſhed at the ſame place in 1726, by his countryman HEINECCIUS, who declares it to be an immenſe treaſure both of juridical and philological learning. Præf. ad Arn. Vinn. inſtit. comment. p. 8. The ſame HEINECCIUS has himſelf added conſiderably to the ſtock of legal knowledge in his work entitled, *Antiquitatum Romanarum jurisprudentiam illuſtrantium Syntagma*, which conſiſts of a regular ſeries of claſſical and hiſtorical obſervations on the *Inſtitutes*, in 2 vols. 8vo.

In the preſent century alſo, JOACHIM HOPPIUS publiſhed *Commentatio ſuccincta ad Inſtitutiones Juſtineaneas*. Franckfort, 1731.

They have been tranſlated into French by CLAUDE JOS. DE FERRIERE, with elegant illuſtrations and references to the laws of France, anno 1725.

EDEN's excellent book, *Juriſprudentia Philologica*, and DR. HARRIS's very accurate *Engliſh Tranſlation of the Inſtitutes*, are generally known and admired. It may be curious to know there is an edition of them in latin hexameters, by one L. HONORATUS DRACO. Lyons, anno 1551.

9 The DIGESTS were divided by Juſtinian into ſeven parts, fifty books and four hundred and thirty titles, a full account of which is given in the Conſtitution *De confirmatione Digeſtorum*, and is repeated, COD. Lib. 1. tit. 17. *De veteri jure enucleando.*

From the numerous teſtimonies in favour of this work, nothing ſtronger perhaps can be ſelected than the following eulogy of LAURENTIUS VALLA, a critic, whoſe elegance of taſte and accurate

plan of reformation as imperfect A. D.
while any branch of Juriſprudence 533

curate ſeverity of judgment give conſiderable weight to his commendations: "I have repeatedly read over, ſays he, the fifty books of the Digeſts, and always with additional pleaſure and admiration; for it is impoſſible to ſay which is moſt ſtriking in that work, the labour and judgment of the ſelection, the wiſdom and equity of the laws, the fund of juridical learning, or the dignity of the language; "*et hæc ipſa in unoquoque illorum ita ſunt egregia et perfecta, ut vehementer dubites quem cui præferendum putes, et his nihil addi adimive poſſe videtur tam eloquentiæ quam latinitatis et elegantiæ.*" Præf. ad lib. 3. Elegantiarum.

It would be endleſs to enumerate all the different editions of the Digeſts. From the original FLORENTINE or (as it is ſometimes called) PISAN COPY, above fifty complete ones have appeared, the beſt of which are undoubtedly thoſe of the 16th Century. The Nuremberg edit. of 1529, in 3 vols. by HOLOANDER, is uſually ſpoken of as the firſt. That of Florence, publiſhed by LÆLIUS TAURELLIUS and his ſon FRANCIS, anno 1553, in 3 vols. folio, is (as they inform us in their dedication to COSMO DE MEDICIS) printed in exact imitation of the old Florentine MS. and coſt them almoſt ten years labour. DR. TAYLOR calls it *The Glory of the Preſs*: though STRUVIUS thinks it was excelled by the Venice edition of 1574, in 5 vols. 4to. which contains the *Corpus juris civilis*. "Hæc editio ob chartæ, literarumque nitorem, accuratam imprimendi rationem, diſtinctiones rubricarum atque adjectum indicem ſatis locupletem, reliquis omnibus præſtat." STRUVII *Hiſt. juriſ.* cap. 5. §. 13. Of the more modern editions, none perhaps are comparable with that publiſhed anno 1748, by ROB. JOSEPH POTHIER, a learned civilian of Orleans; and which was three years ago re-edited in a very ſplendid manner at Lyons, in 3 vols. folio.

A. D. 533 remained incomplete, Juſtinian iſſued out his orders for a reviſion of the CODE, which had been publiſhed about five years before. His object in this was not only, as he ſays, to render it more complete by the addition of many new caſes and deciſions which had ariſen ſince its publication; but to purge it alſo of many inaccuracies which had been admitted into it. The OLD CODE was accordingly made void, and the new one publiſhed in the enſuing year.[1] So ſcrupulous was the Emperor to preſerve this RE-

Codex repetitæ Prælectionis 534

1 "Nemini concedimus ex primâ Juſtinianei Codicis editione aliquid recitare; ſed quod in præſenti *purgato* et *renovato Codice* noſtro ſcriptum invenitur, hoc tantummodo in omnibus et judiciis et obtineat et recitetur." Conſtitut. *Cordi nobis eſt, &c.* ad Cod. repetit. prælect. de emendatione, Cod. §. 5. This Code is divided into twelve books, in imitation, ſays Gravina, of the XII Tables, and theſe again into 776 titles: it contains the Conſtitutions of 34 Emperors, from ADRIAN to JUSTINIAN incluſive.

The firſt edition, which is complete in twelve books, is that publiſhed by HOLOANDER, at Nuremberg, anno 1530. The former contain only the nine firſt books. Since that time it has ſeldom been publiſhed ſeparate from the Corpus Juris Civilis.

VISED

VISED CODE in its original form, that although (as it was natural to expect) new emergencies would be constantly demanding fresh Edicts and Institutions; yet he would not permit any addition to be made to this work. All the regulations therefore subsequent to the revised Code were suffered to remain in an indigested state, under the title of NOVEL CONSTITUTIONS, and were not collected into a volume till the last year of his reign; though (as DR. TAYLOR observes) most of them appear to have been enacted between the years 534 and 542.[2] The greatest part of these Novels were written originally in

A. D. 534

Novel Constitutions 566

2 These NOVEL CONSTITUTIONS are divided into nine Parts or *Collations*, as they are called, and are 168 in number, "Ergo centum sexaginta octo Justiniani Novellas "nec plures, nec pauciores numerari consentiunt omnes." *Index Constit. Novell.* prefixed to GOTHOFRED's edition of them in the Corpus Jur. Civ. FABRICIUS, who in the 12th vol. of his *Bibliotheca Græca*, has given a very comprehensive view of these Novels, follows this account of GOTHOFRED, though, he premises, cap. 6. that writers have varied considerably in respect to their number and arrangement. The first edition of these

A. D. 566 Greek: not long however after Justinian's death, a Latin Version, by an anonymous author, made it's appearance.

Volumen Authenticum 568 This translation was so faithfully executed that it was, by way of distinction, called the AUTHENTIC CODE. It had the lead of every other, in the Courts of Justice, for many years after it's publication, and upon the revival of the Civil Law, recovered its original authority.[3]

these Novels, worthy consideration, is that by NIC. BOERIUS, at Lyons, 1512. And the best, F. DESMARE's' republication of PITHOU's edition, with the Notes of AUGUSTINUS and his own Glosses, 1 vol. fol. Paris, 1689.

3 "Quamobrem et nos una cum Græco textu hanc Anonymi versionem retinemus in foro." *De ortu, &c.* cap. 135. And LEUNCLAVIUS says, "Laudo consilium Antonini Contii, qui "Novellarum interpretationem *veterem* omnino publicandam "putavit, nam multis in locis ea plenior est et integrior quam "Græcæ editiones." *Notatorum juris*, Lib. 2. p. 365. The disputes about this Latin Translation are infinite; some suppose it to have been made in the reign of Justinian and speak of it as "*injucunda, salebrosa et barbara.*" Others again affirm it to be the work of JULIAN, and declaring the original to be "*Asiaticâ quâdam luxuriâ diffusus, prolixitateque nimiâ scriptus*, commend this translation for being "*compendiosior et stylo non "inelegante edita.* ALCIATI *Parergon Juris.*" Lib. 2. cap. 46.

There

JULIAN, who was a public reader of the law at Conſtantinople in the reigns of Juſtin 2d, Tiberius 2d, and Mauritius, the immediate ſucceſſors of Juſtinian, made an *Epitome* of this Latin Verſion which goes under his name, and which, for a ſhort time, ſo far ſuperſeded the *Authentic Code*, that it had nearly ſunk into obſcurity. A. D. Juliani Novellæ 570

But none of theſe works, nor any of thoſe prior to the reign of Juſtinian, however admired they have been, were ever of any authority in themſelves, nor are they to be conſidered as forming any eſſential part of what is called, CORPUS JURIS ROMANO-CIVILIS, which, in its ſtrict ſenſe, is applied ſolely to the INSTITUTES-PANDECTS-CODE and NOVELS OF JUSTINIAN, though in a more extenſive

There are many alſo who doubt it's antiquity, and aſcribe it to a Monk of the 12th Century. RITERSHUSIUS, *in jure Juſtin. in proœm.* cap. 4. n. 9. It was publiſhed at Lyons, anno 1561, by LUD. MIRÆUS, having the heads of all thoſe Greek Novels which are admitted in the Latin Epitome, inſerted in the margin.

ſigni-

A. D. signification, it is underſtood to
570 comprehend various other juridical compilations.[4] [M]

In the Eaſtern Empire, after the death of Juſtinian, the laws underwent a variety of modifications. But to excel in civil wiſdom and the even adminiſtration of juſtice was not a characteriſtic of the Conſtantinopolitan Court. The influence of the Greek law never extended beyond the limits of the empire, and even there it had but a feeble and undefined authority. It is not neceſſary therefore to be very particular on this head.

During the lifetime of Juſtinian or (according to ſome) very ſoon

4 No leſs than thirty editions of the *Corpus juris Civilis* were produced in the 16th century, at Paris and Lyons only. The completeſt is that of DIONYSIUS GOTHOFRED, publiſhed by SIMON van LEEUWEN, at Leyden, in one large folio, anno 1663. It contains (beſides the Inſtitutes, Pandects, Code and Novels of Juſtinian) Various other Edicts and Novel Conſtitutions, The Opinions of Paulus with the Notes of CUJACIUS, The Faſti Conſulares, The Apoſtolic Canons, Fragments of Feudal Law and of the XII Tables, An extenſive Synopſis of Civil Law and very copious Indexes to the whole.

after

after his death, THALELÆUS, who, from great eminence in his profession was called νομικῆς ὀφθαλμὸς, *the Eye of the Law*, made a translation of the Pandects and Code into Greek.[5] The Institutes were published also in that language, by THEOPHILUS.[6]

A. D. Thalelæus 566

5 It was from this translation of Thalelæus, it is supposed, that Basilius and his sons copied a great number of laws in their Greek Code. FABRIC. *Bibl. Græc.* Lib. 6. cap. 6.

6 HEINECCIUS and GRAVINA are of very opposite opinions with respect to this THEOPHILUS. The former supposes him to be the same who assisted Tribonian in Justinian's Compilation; the latter expressly calls him, "Alium ab eo qui condendo juri operam navavit:" and in this assertion he is supported by FABROTTUS, who in his preface to the Paris edition of 1657, conjectures that he lived in the 10th Century, in the reign of Constantine Porphyrogen. ALCIATUS. (*Parergon juris*, Lib. 5. cap. 23.) places him as low as the beginning of the 13th Century, and calls him a follower of Accursius; but the opinion of Fabrottus is the most general.

DANIEL HUET, (*De claris interpretibus*, lib. 2. p. 133.) calls this Greek Version of the Institutes "Elegans quidem "et erudita sed *prolixissima paraphrasis*." which seems contrary to the emperor's injunction "Ut nemo neque eorum qui in "præsenti juris peritiam habent, neque qui postea fierent au-"deat commentarios iisdem legibus adnectere: nisi tantum si "velit eas in Græcam vocem transformare *sub eodem ordine*, "*eâdemque consequentiâ sub quâ et voce Romanâ positæ sunt*, quod

A. D. It does not appear that any material change took place after this, till the reigns of BASILIUS THE MACEDONIAN and his ſons, LEO
865--907 the Philoſopher, and CONSTANTINE PORPHYROGEN, under whom a freſh compilation for the uſe of the Greek Empire, made its appearance.

Authors are very much divided about the order in which this work was executed and in aſſigning to each of the emperors their reſpective parts.

Baſilica or Procheiron 876 The moſt probable account ſeems to be; that BASILIUS firſt publiſhed the *Baſilica*, or *Imperial Conſtitutions*, in *forty* books, which being a ſort of Epitome of Juſtinian's Code, was called PROCHEIRON, or Manual of Law: that his ſon LEO re-publiſhed the ſame

" Græci Κατα ποδα dicunt." *De Confirmatione Digeſt.* and again, *Cod.* lib. 1. tit. 17. §. 21. Nevertheleſs AUGUSTINUS recommends it as an excellent companion to the Latin Inſtitutes. *Emendationum*, lib. 3. cap. 8. It was firſt publiſhed by FROBENIUS at Baſil, anno 1534. The beſt edition is that by FABROTTUS, mentioned above.

work,

work, with an addition of twenty books, under the title of *βασιλίκα νομιμὰ*, or, *ἑξήκοντα βίβλον*, and that the compilation was completed by CONSTANTINE, in a revised edition of the *Basilica*, which consisted of *sixty* books, and is the very same text which is at this day extant.[7]

A. D.
Leo's Basilica 887
Constantine's Basilica 906

7 That this is the true state of the matter, I think may be collected not only from the work itself, but from the testimony of the ablest civilians, who have commented upon it. See the preface to the several editions, and ASSEMANNI, *Bibliotheca Juris Orientalis*. Lib. 2. cap. 11. & 16.

FABRICIUS, who had seen the MS. of Basilius's *Procheiron*, corrects CUJACIUS (*Observationum*. Lib. 6. cap. 9.) for asserting that it was divided into *sixty* books, whereas it appears, there are *forty* only. FABRIC. *Bib. Græc.* Vol. 12. lib. 6. cap. 6. The best edition of the complete *Basilical Code* is that of FABROTTUS, in 7 vols. fol. Greek and Latin, Paris, 1647.

The two sons of *Basilius* were very eminent for their attachment to litterature; LEO, besides his juridical labours, left behind him *A Treatise on Tactics*, and some *Theological* and *Historical* works, which are still preserved among the Vatican MSS. His Oracles of the Greek Empire, accompanied with curious symbolical pictures, are published at the end of the vol. of the Byzantine Historians, by PET. LAMBECIUS.

CONSTANTINE, besides a treatise on *The administration of the Empire* and another on *Tactics*, is author of a large work on

A. D. 906 These Collections, it must be observed, were not made from Justinian's original work, but from the Greek translation of it, and they consisted, of the principal parts of the Pandects and Code, and of all the Imperial Constitutions, from JUSTINIAN to BASILIUS and CONSTANTINE. In imitation of the Institutes, as translated by Theophilus, each of these emperors drew up an Epitome of their larger works.[8] A custom which prevailed very much after-

the *Ceremonial of the Byzantine Court*, of which a magnificent edition, in Greek and Latin, was printed at Leipsic, in the year 1751, by the joint labour of JO. HEN. LEICHIUS and JO. JAC. REISKIUS, the latter of whom has added a very copious and learned Commentary.

8 "Edidit idem LEO *juris Epitomas*; opus meris definitionibus et regulis constans et satis elegans; quod erat in Palatinâ Bibliothecâ ut FREHERUS testatur; confecisse etiam Leonem *Prochirum, ut instar Institutionum foret*, AUGUSTINUS, in Notis ad Novellas prodit." SUAREZ. *Notitia Basilicorum.* This is no doubt the Manual which LABBE mentions as being in the Royal Library at Paris. As to CONSTANTINE's *Procheiron*, SUAREZ thinks it was nothing more than a revised edition of his brother's work. Loc. cit.

not

wards, among the greek lawyers, who (as DR. DUCK obſerves) were not near ſo numerous as the commentators on Juſtinian, but appear to have been more fond of *epitomizing* than of illuſtrating.[9] This opinion is juſtified by the following works which have come down to us either entire or in fragments; and many others of a ſimilar nature might be adduced, if it were neceſſary. A. D. 906

A *Compendium* of Law, drawn up by MICHAEL ATTALIOTA, by order of the Emperor Michael Ducas, under the title of *Pragmatica*,[1] and a *Synopſis* of the ſame age, by MICHAEL PSELLUS, written in political verſe.[2] Ἐξαϐίϐλον, Attaliota 1073 or according to Suarez 1077 Pſellus 1076

9 *De Uſu et Autoritate Juris Civilis*, &c. Lib. 1. cap. 5. "Permulta *Manualia Juris* in Oriente fuerunt, omnibus fere patronis cauſarum ſive rhetoribus ſuum ſibi Codicillum, et quaſi *viæ comitem* conficientibus. CUJAC. *Obſervat.* Lib. 6. cap. 10.

1 It conſiſts of 96 titles, and is publiſhed by LEUNCLAVIUS, Vol. 2. *Juris Græco-Romani.*

2 There is an edition of Pſellus, by FRAN. BOSQUET. Paris, 1632.

or,

A. D. or, *Procheiron* of HARMENOPU-
Harmenopulus 1143 LUS,[3] a Judge in Theſſalonica, in ſix books, compiled from the work of Baſilius; in imitation of which a Compilation of Eccleſiaſtical Law, drawn up many years before by PHOTIUS patriarch of Conſtantinople, was arranged and publiſhed
Balſamon 1144 by THEODORE BALSAMON, patriarch of Antioch, with a commentary and illuſtrations. Such as wiſh to be informed of many other works of the ſame kind with theſe already mentioned, I refer to the various Collections of the *Jus Græco-Romanum*, and to FABRICIUS's *Bibliotheca Græca*, Lib. 6. cap. 6.[4]

None of theſe, whatever authority they might have poſſeſſed in

3 The original MS. of this work, is in the Vatican. The earlieſt edition is that of Paris, 1540, by ADAM SUALLEMBERG. The beſt is DION. GOTHOFRED's, Lugd. Batav. 1576.

4 For an hiſtorical and critical account of the Greek Law, conſult the copious prefaces to the different editions of the Baſilica, particularly the *Notitia Baſilicorum* of Jos. SUAREZ, prefixed to FABROTTUS's noble edition of the Greek Conſtitutions, and the dedicatory preface of the ſame Fabrottus to Chan-

cellor

the particular diſtricts where they were publiſhed, were ever admitted upon the revival of the civil law as general rules of deciſion in the Courts, or were any otherwiſe applied and ſtudied in the Schools than as uſeful treatiſes for explaining difficulties in the Roman Law, or for illuſtrating the hiſtory and cuſtoms of the eaſtern Empire.[5] A. D.

The peculiar ſituation of the Weſt, at the time when Juſtinian publiſhed his compilation; the tumults which immediately followed; and the revolution which took place in the Italian Provinces about two

cellor SEGUIER. See alſo the *Chronologia Juris of* MARQUHARD FREHER. DR. DUCK, *De uſu et Authoritate Juris Civilis*, &c. Lib. 1. Cap. 5. and FABRICII *Bibliotheca Græca*. Lib. 6. Cap. 6.—For a catalogue of the works of the Greek Lawyers, ſee LEUNCLAVIUS's edition of the *Jus Græco-Romanum*, 1596.

5 "Ex quibus (ſays GRAVINA, ſpeaking of theſe works) "atque ex græcorum juriſconſultorum ſuperſtitibus notis et "interpretatiunculis, CUJACIUS multos juris civilis locos re-"ſtituit, explicavit, et illuſtravit: ita ut illius Græcorum lu-"minibus adſperſa germanam Romanorum juriſprudentiam, "caligine temporum intermortuam, ſuſcitarit." *De Ortu*, &c. cap. 138.

years

A. D. 568 years after this emperor's death, will ſufficiently account for the condition of his laws in that part of the Roman World, where there is little reaſon to ſuppoſe they were ever very generally received.[6]

553--568 From the expulſion of the Goths till the irruption of the Lombards, the interval of tranquility was too ſhort to ſuffer them to take deep root; beſides, the attention of Juſtinian was, during the laſt years of his reign, ſo entirely engroſſed by military matters, that it was not in his power to make the beſt uſe of that favourable opportunity for encouraging their growth and ſtrengthening their influence,

6 It has been the opinion of many reſpectable writers that the Codes, Novels and Inſtitutes of Juſtinian were uſed in many parts of Italy, during the middle ages, without interruption; and the learned MURATORI is inclined to ſuppoſe, that even the *Pandects* were never entirely obſolete; in proof of which he produces ſome ancient Inſtruments of the 9th, 10th and 11th Centuries, in which references are made to certain paſſages in that work. *Antiquit. Ital. Medii Ævi.* Tom. 3. Diſſert. 44.

which

which was ſoon after entirely con- A. D.
fined to the few greek provinces in Italy. The ſmall Exarchate of Ravenna, where the Roman law had long found an Aſylum at laſt ſhared the fate of the other Italian Cities, and yielded to the arms of the Lombards.

This may be accounted *the æra* 752
*of the final extinction of the Roman Law*, which during the ſucceeding ages of the groſſeſt barbariſm and ignorance, laid buried in obſcurity, and did not revive till toward the middle of the twelfth Century.[N] 1137
" Tantaque et tam diuturna bar-
" baries Italiam inundavit, ut jus
" Romanorum etſi magno ſtudio,
" deletis Longobardis, a Carolo
" Magno quæſitum; tamen exem-
" plariorum inopiâ longâque obli-
" vione populorum uſque ad ſæcu-
" lum duodecimum, nempe ad Lo-
" tharii tempora in tenebris delitu-
" erit. Igitur ut fatum omne Juſ-
" tinianæorum librorum oculis le-
" gentium ſubjiciamus, vixêre illi

A. D. "quidem *in Græciâ* a JUSTINIANO "usque ad LEONEM, nempe ab "anno Christi 536, ad annum "910. *In Italiâ* vero (si Raven-"nam excipias) resistente ab initio "barbarie Gothorum, *nunquam flo-"ruerunt*, vixque tandem emerse-"runt, anno 1130.[7]

Thus then have I endeavoured to display and illustrate the Origin and Progress of the laws of *regal*, *consular*, aud *imperial* Rome, and to mark, as distinctly as the subject will permit, their various stages of revolution and reform during a period of more than twelve centuries. And here for the present I shall close THE CHRONOLOGICAL VIEW.

The History of THE REVIVAL of THE ROMAN LAW, its Connection with THE FEUDAL AND CANON LAW,[8] its CHARAC-

7 GRAV. *De ortu*, &c. cap. 139.

8 Writers are very much divided in their opinion respecting the origin of *Feudal Law*: some have refined so far as to think they discover it in Romulus's institution of patron and client; but this (as SELDEN observes) is entirely without foundation; for "though there certainly was *a bond* between the parties, yet it does not appear there was any *possession held* by that bond." *Titles of Honour*, Part 2d. Chap. 1. Sect. 23. Others

TER and INFLUENCE in the different COURTS and ACADEMIES of Europe, together with

Others again have derived it from the military colonies of the Romans. But the conditions upon which theſe were held do not appear to have been of a feudatory nature. Something of this kind indeed ſeems to be expreſſed in the grants made by the emperor Alexander Severus of ſome conquered territories on the Frontiers "Limitaneis Ducibus et militibus, ita ut "eorum ita eſſent *ſi hæredes illorum militarent*, nec unquam ad "privatos pertinerent." LAMPRID. *in Vit. Alex. Sever.* But after all, the moſt general opinion is, that the Feudal Law owes its introduction to the Lombards and other northern nations, who ſettled in the Roman provinces in the ſixth and ſeventh centuries, "The power and glory of whoſe princes "(ſays Selden) conſiſting alone in the multitude of ſuch as "were devoted to live and die with them, the bond of ſuch "devotion was made chiefly by ſuch gifts of poſſeſſions as "created a *feudal right* between the Giver and Poſſeſſor, con- "firmed alſo by an oath on the Poſſeſſor's part, which bound "him both to be faithful to the Giver and alſo aſſiſtant to him." *Loc. Cit.* MOLINÆI *Conſuetudines Pariſ.* cap. 5. Des Fiefs. CRAG. *Epiſt. nuncupatoria et Jus Feudale*, Lib. 1. *Diegeſis* 4.

From the diſunion of the Roman Empire, and the eſtabliſhment of Papal Authority, the *Canon Law* is univerſally allowed to have derived its origin. Such was the powerful influence of religion in thoſe ages, that the very acts of obedience which were refuſed to the beſt political inſtitutions, were voluntarily yielded to the arbitrary *Decrees of Councils*, the *Opinions of the Fathers*, and the *Edicts of the Popes*.

The moſt ancient Collection of Eccleſiaſtical Law, is the CODEX CANONUM ECCLESIÆ UNIVERSÆ. It was by this

the LIVES and WRITINGS of its most eminent PROFESSORS, will furnish copious and interesting materials for a SECOND PART.

Code that the Eastern and Western Churches were for many ages governed, and it is to be considered as the remote source of the *Canon Law*. JUSTELLI. *Præf. ad Cod. Canon. in Bibliothecâ Juris Canonici veteris*. Vol. 1. p. 18. The Canons of the first Œcumenical Council at Nice, A. D. 325, with those which followed, down to that of Chalcedon, A. D. 451. form the principal part of it, and they are the same with those which Justinian has so strongly confirmed in the Novel *De Ecclesiasticis Titulis*, &c. 131. tit. 14. Collat. 9. We read of many other collections of this sort as early as the 6th and 7th Centuries, but the authority of all these was superseded by the famous Compilation of GRATIAN, a Benedictine Monk, who in the year 1157, published a DECRETAL which has been ever since regarded as the basis of the *Canon Law*. The influence of that zeal for juridical pursuits, which was at this period awakened by the discovery of Justinian's Pandects, is visible in the numerous compilations and commentaries subsequent to GRATIAN's work, and the desire of closely imitating that emperor, produced in process of time such a similarity both in the form and character of the Civil and Canon Law, that at last (as DR. DUCK has observed) "the one could no longer exist without the other." *De Usu et Authoritate Juris civilis*, &c. Lib. 1. cap. 7. DOUJAT *Hist. Du Droit Canonique. Partie*, 1re. chap. 17, 18, &c.

# ILLUSTRATIONS.

# ILLUSTRATIONS.

## P. 7. [A]

THERE is no branch of Roman law upon which the ingenuity of Civilians has been more induſtriouſly exerciſed, than upon the Hiſtory and Interpretation of the XII TABLES. The works to which this obſcure but intereſting ſubject has given riſe, are many of them extremely valuable, not only for the ſtriking illuſtrations they afford of the language and manners of a very remote period, but for the frequent light which they throw upon the writings of the ancient Poets and Philoſophers.[a]

[a] The writers upon this ſubject are very fully enumerated by FABRICIUS, in the 4th book of his *Bibliotheca Latina*, cap. 9.

Of the ancient Commentators, the principal upon record are SEXT. ÆLIUS and L. ACILIUS, both in the 6th Century of

The high commendations beſtowed upon theſe curious fragments of civil wiſdom, by thoſe who were familiar with them, and who, we know, were well qualified to judge of their merits, muſt naturally excite in us a mixture of veneration and regret.

Such an encomium as that which CICERO has paſſed upon them, though perhaps a little exaggerated, might alone be ſufficient to convince us of their value. They outweigh, he tells us by the mouth of Craſſus, whole libraries of philoſophy, and contain in themſelves a complete body of juridical wiſdom, "Fremant omnes licet: dicam quod ſentio,

of the City. SERV. SULPICIUS in the 7th, and ANTISTIUS LABEO, the founder of the Proculeian Sect, in the 8th. The moderns may properly be diſtributed into three claſſes. Such as collected and arranged the ſcattered fragments of the XII Tables, as LIPSIUS and PITHOEUS. Such as added extenſive commentaries to their compilations, as BALDUIN, HOTTOMAN, RÆVARD, AUGUSTINUS; and ſuch as publiſhed them with ſhort Scholia and explanatory Gloſſes, as PRATEIUS and CONTIUS. But none of theſe are in any way comparable with J. GOTHOFRED, who in the firſt part of his *Quatuor fontes Juris civilis* has thrown the fulleſt light upon this ſubject. The beſt edition of that work is publiſhed by EVERARD OTTO, in the 3d Vol. of his *Theſaurus Juris Romani.* edit. Lugd. Batav. 1727. GRAVINA has alſo treated largely on this head, with his uſual elegance and accuracy, in the 2d book of his *Origines Juris civilis.*

"Bib-

"Bibliothecas mehercule omnium Philoſo-"
"phorum uno *XII Tabularum* libello authori-"
"tatis pondere et utilitatis ubertate ſuperari.[b]"
AULUS GELLIUS has introduced CÆCILIUS the lawyer ſpeaking of them in very high terms to FAVORINUS who, notwithſtanding ſome objectionable points, readily agrees with him, adding "Non minus cupidè Tabulas "iſtas XII legi, quam illos decem libros Pla- "tonis de legibus."[c] And the ſame Philoſopher, in another place, ſeverely cenſures a lawyer, to whom he had in vain applied for an explanation of an obſolete word, for preſuming to profeſs and practiſe without being accurately acquainted with the Decemviral Laws,[d] a work which LIVY has pronounced to be, "Fons omnis publici privatique "juris."[e]

To what particular cities of Greece the Deputies of the Roman Commonwealth were indebted for this ineſtimable treaſure, cannot at this diſtance of time, and from ſuch mutilated portions of it as remain, be ſatisfactori-

[b] *De Oratore*, Lib. 1. cap. 43 & 44. See alſo many paſſages in the 2d book *De Legibus*.

[c] *Noctes Atticæ*. Lib. 20. cap. 1.

[d] Ut ſupra. Lib. 16. cap. 20.

[e] Lib. 3. cap. 34.

ly determined, though much labour and ingenuity has been employed upon the ſubject.[f] That ATHENS was the principal object of their embaſſy we have the concurrent teſtimony of the beſt writers;[g] nor indeed can we wonder that the preference was given to this celebrated city upon ſuch an occaſion, if we reflect that it was the ſplendid æra of PERICLES' adminiſtration, when not only Philoſophy and the Science of Legiſlation, but every elegant and uſeful purſuit was carried to ſuch an uncommon degree of perfection, that the Athenian State was eminently diſtinguiſhed as the general School of Greece.[h]

Though the influence of the XII Tables was conſiderably diminiſhed by a variety of new cuſtoms and laws, which were at diffe-

[f] GRAVINÆ. *Specimen Priſci Juris.*

CICERO mentions two works which, were they extant, would prove excellent guides in ſuch an enquiry. "Omnium "fere civitatum non Græciæ ſolum ſed etiam Barbariæ, ab ARISTOTELE, mores, inſtituta, diſciplinas; a THEOPHRASTO leges etiam cognovimus." *De Finibus.* Lib. 5. cap. 4.

[g] "Miſſi Legati Athenas." LIV. lib. 3.—DIONYSIUS HALICARNASS. Lib. 10. cap. 54. edit. Hudſon. 1704. CIC. *pro Flacco.* cap. 26.

[h] Thucydid. Hiſt. Lib. 2. ſect. 37. 41. edit. Hudſon, 1696.

rent

rent times introduced,[i] it has been thought that, upon the following authorities, their existence may be traced through almost every period of the Roman History, to the age of Justinian.

We are told that they were first made public, by being fixed up in the Forum on tablets of brass, " Leges Decemvirales " quibus Tabulis XII est nomen, in æs inci- " sas ;" a custom very general among ancient nations, and frequently alluded to by the poets.[k] They were afterwards, it may be presumed, removed to the Capitol, which

[i] Hardly ten years had elapsed from the promulgation of these laws, when, at the instance of the Tribune Canuleius, the intermarriage of Patrician and Plebeian families took place in direct opposition to a law in the twelfth table. Liv. lib. 4. cap. 6.

The *Æbutian law*, A. U. C. 500. *De judiciis centum-viralibus*, struck a fatal blow at their authority. Gellius. *Noct. Attic.* Lib. 16. cap. 10. And Cicero informs us, that the *Cornelian law*, which regulated the Prætor's Edicts in his time, caused those Edicts so far to supersede the XII Tables, that they were no longer considered as the first rudiments of juridical studies. *De Leg.* lib. 2. cap. 59.

[k] Liv. lib. 3. cap. 57. It is understood by Virgil, when he says, " fixit leges—atque refixit" and by Ovid, speaking of the golden age

——— " Nec verba minantia *fixo*
" *Ære* ligabantur."

 be-

became in proceſs of time the grand repoſitory of the laws. We may reaſonably infer from what LIVY ſays of the general deſolation occaſioned by the irruption of the Gauls, that the original Tables were at that time either loſt or deſtroyed, but that among other ancient records, they were afterwards carefully collected and reſtored to their priſtine ſtate.[l] The many civilians who are celebrated as commentators upon theſe copies of the original laws in the ages which followed, till the time of Cicero, will be ſufficient to prove their exiſtence at that period,[m] when, as he himſelf acquaints us, "Diſcebant Pueri XII "ut carmen neceſſarium." Not long after this, we find DIODORUS SICULUS ſpeaking of them as extant in his day;[n] and AULUS GELLIUS, who lived in the ſecond Century, quotes a variety of paſſages from them. In the next age there occurs an epiſtle of ST. CYPRIAN, in which we read "Inciſæ ſint "licet leges XII Tabularum, et publico ære

[l] Lib. 6. cap. 1. et Lib. 3. c. 34 & 57. DIODOR. SICULUS, Lib. 12.

[m] See note (a) p. 79.

[n] Lib. 12. cap. 26. edit. Weſſeling. See alſo what SUETONIUS ſays of Veſpaſian's zeal to reſtore the laws in the next age. *Vit. Veſpaſ.* Lib. 8. ſect. 8.

"pre-

"præfixo jura præſcripta; inter leges ipſas "delinquitur, inter jura peccatur, &c."[o] And about a century after, they are alluded to by the Poet AUSONIUS.[p] The ſix books of commentaries which Caius had written upon them were extant (as is evident from various parts of the Digeſts) in Juſtinian's time: from which DR. TAYLOR conjectures, that the laws themſelves muſt neceſſarily have been extant alſo; for (ſays he) "I can hardly ſuppoſe a comment without "the text."[q] When we recollect the miſerable ſtate of human learning in general, and of legiſlative knowledge in particular, during the following ages, we cannot be ſurpriſed that theſe curious relics of civil wiſdom were, after the ſixth century, no longer objects of attention. From this period nothing occurs which can ſerve to throw any further light on their hiſtory; and ſince the revival of the civil law, notwithſtanding the moſt diligent enquiries have been made, no ancient copy of them has been diſcovered.

Of the original dialect of the XII Tables

[o] *Ad Donatum*, Lib. 2. Epiſt. 2.

[p] Idyll. 11.

[q] *Elements of Civil Law.* p. 13. and again *In Comment.* ad *L. Xviralem.* De Debitore diſſecando. p. 4.

we

we are incapable of forming any probable conjecture. The most ancient authentic Inscription in the latin language extant, is that on the *Duillian Column*; which we are informed was erected in the year of the City 493, in memory of a great naval victory gained by C. Duillius over the Carthaginians, and was some years after struck down by lightning.[r] At the latter end of the 16th Century, part of its shaft and the base, containing this curious inscription, were discovered, in digging near the Arch of Septimius.[s]

From the specimen which this monument affords us of the language, at the close of the 5th Century of the City, we may form some general idea of that which prevailed two hundred years before; and may be led to suspect that those fragments of the Decemviral Laws, which are preserved in the writings of

[r] Liv. lib. 42. cap. 20. Valer. Maximus, Lib. 3. cap. 6.

[s] Both Pliny and Quinctilian speak of this column as being in the Forum in their time. Hist. nat. lib. 34. cap. 5.—Lib. 1. cap. 7. The inscription was first published, but in an imperfect manner, by Aldus Manutius. Afterward with better success by Pet. Ciacconius, who has added very excellent illustrations. It is to be found also in Grævius's edition of L. Annæus Florus, ann. 1702. and in Nic. Funccius. *De Pueritiâ Latinæ Linguæ*. p. 116, &c.

Cicero,

Cicero, Gellius, and Macrobius (rude as they may, even in their preſent dreſs, appear, compared with the productions of more poliſhed ages) have not come down to us in their original form.[t] It ſeems that even before the time of CICERO, heavy complaints were made of the obſcurity of their ſtyle, and many parts were become ſo very obſolete, that the moſt profound antiquaries were unable to diſcover their true meaning.[u] In GELLIUS, the lawyer to whom I have before alluded, in defence of his ignorance, anſwers "Ego verò "dicere atque interpretari hoc deberem, ſi "jus *Faunorum* et *Aboriginum* didiciſſem — "Sed enim quum omnis illa XII Tabularum "antiquitas, *Lege Æbutiâ latâ*, conſopita ſit, "ſtudium, ſcientiamque ego præſtare debeo "juris et legum, vocumque earum, quibus "utimur."[w] The ſame writer has related the principal heads of a very curious converſation upon this ſubject. In conſequence of ſome objections, accidentally ſtarted, to the

[t] See a treatiſe of FUNCCIUS, *De Origine latinæ linguæ.* cap. 4. & 5.

[u] Mulieres ne *leſſum*, funeris ergo, habento. Tab. X. "Hoc "veteres interpretes Sex. Ælius. L. Acilius non ſatis ſe intel- "ligere dixerunt." CIC. *De legibus*, Lib. 2. cap. 23.

[w] *Noctes Attic.* Lib. 10. cap. 16.

letter

letter and ſpirit of the Decemviral Laws, CÆCILIUS enters into a formal defence of them. He among other things, pronounces them to be "inquiſitis, exploratiſque multa-"rum urbium legibus eleganti atque abſolutâ "brevitate verborum ſcriptæ," and adds that the preſent obſcurity of their language ought to be no argument againſt their original merit, "nam longa ætas, verba atque mores veteres "oblitteravit, quibus verbis moribuſque ſen-"tentia legum comprehenſa eſt.—Nec ideo "contemnas legum iſtarum antiquitates, "quod pleriſque ipſis jam P. R. uti deſiverit. "Non enim profecto ignoras legum oppor-"tunitates et medelas pro temporum mori-"bus et pro rerum publicarum generibus, ac "pro utilitatum præſentium rationibus, pro-"que vitiorum, quibus medendum eſt, fer-"voribus mutari et flecti; neque uno ſtatu "conſiſtere, quin, ut facies cœli et maris, "ita rerum atque fortunæ tempeſtatibus va-"rientur." [x]

He then proceeds to combat an objection made to the unwarrantable ſeverity and in-

[x] Ut ſupra. Lib. 20. cap. 1.

SENECA, in ridicule of thoſe who affected to make uſe of antiquated terms, ſays, *Duodecim Tabulas loquuntur.* Epiſt. 114.

conſiſtency

confiftency of fome particular laws, efpecially of that which prefcribes Retaliation in cafes of injury, and another which was fuppofed to permit a number of defrauded Creditors *to cut in pieces the body* of an infolvent Debtor.[y] He fhews that thefe were perfectly fuitable to the manners and genius of the Roman people in that early age, efpecially the latter, which, however cruel it might then appear, was nothing more than the natural refult of thofe rigid notions which the firft Romans entertained of public and private faith, and as a ftrong argument in its favour, he defies his antagonift to produce a fingle inftance of its ever having been put in execution.[z]

It may appear ftrange that a fact eftablifhed upon the concurrent teftimony of the beft ancient writers, and ftill further ftrengthened

[y] See the genuine fenfe of this law moft ingenioufly reftored and beautifully illuftrated by Dr. J. Taylor, in a treatife entitled, *De inope debitore in partes diffecando*. Cantab. 1742.

[z] When Livy defcribes the horrid punifhment of Mettius, the Alban General, he adds "primum *ultimumque* illud fupplicium apud Romanos exempli parum memoris legum humanarum fuit. In aliis gloriari licet nulli gentium *mitiores placuiffe pœnas*." Lib. 1. cap. 28.

by the general acquiescense of the learned in all succeeding ages, should at last become a matter of controversy. This however has been the case in the history of the XII Tables. At the beginning of the present century a treatise was published by a Neapolitan civilian, entitled "Principi di una Scienza "nuova intorno alla natura delle nazioni," in which all the principal circumstances related by different authors of the origin and establishment of these celebrated laws are canvassed, and in the conclusion denied.[a] This same idea was adopted and considerably extended about fifty years ago in France, by MONS[R] BONAMY, who, in three elaborate Dissertations endeavours to prove,

[a] GIOVAN. BATTIST. VICO; who confesses that his doubts were first awakened by the following inconclusive passage in Macrobius. "Ita Hercules *ut de ipsis XII Tabulis factum est*, "quarum ubi contemni antiquitas cœpit, eadem illa quæ illis "legibus cavebantur *in alia latorum nomina transierunt*." Lib. 2. cap. 13. which clearly refers to times subsequent to their compilation and therefore cannot in any shape apply to the æra of the disputed embassy. GANASSONI, an Italian Nobleman, not long since composed a tract in further support of VICO's arguments; but both these writers have been very ably confuted in some Dissertations published about two years ago, "Intorno al trasporto delle Romane Leggi delle XII "Tavole, dalla Grecia." by Abate ANT. STRAMIGIOLI.

that

that the famous embaſſy to Greece, for the purpoſe of collecting a ſyſtem of law for the Roman Republic, was a fiction, politically deviſed by the Patricians, to amuſe the attention of the people; and that during the pretended abſence of the commiſſioners, the leading men of the State were employed at home, in new modelling their own original laws and obſolete inſtitutions, which, at the end of three years, they impoſed upon the credulous public as the fruits of the foreign expedition.[b] This ſingular opinion MONS[r] BONAMY has with great addreſs attempted to eſtabliſh, not only on the teſtimony of ancient lawyers and hiſtorians, but on a variety of internal evidence. But whatever praiſe may be due to this excellent ſcholar, for having laid open to us a valuable treaſure of juridical and philological learning in defence of his favorite paradox, we muſt at the ſame time obſerve that the greateſt part of his argument ſeems to be founded upon very equivocal and partial citations; nor do I think, that from the whole, collectively conſidered, more can reaſonably be inferred, than that the XII tables did not conſiſt merely of greek

[b] Tom. XII. Memoires de l'Académie royale. p. 27, &c.

laws, but that a confiderable number of the original inftitutions and cuftoms of regal Rome, which had grown obfolete fince the great revolution, were adopted and revived under different forms, by the Decemvirs, in this new compilation: a fact which DIONYSIUS and other authors of the higheft authority conftantly allow, and which has been the invariable opinion of all thofe writers who have employed themfelves in analyfing and comparing the Regal and Decemviral laws.[c]

I cannot conclude this article without taking notice of two very common errors in refpect to the XII Tables. The firft is, that they were originally drawn up in verfe. This opinion appears to have taken its rife from an expreffion of CICERO, who tells his friends "Difcebamus pueri XII ut *Carmen* "neceffarium." The advocates for it remind

[c] DION. HALICARN. Lib. 10. cap. 57 & 60. Lib. 2. cap. 27 & 28. LIV. Lib. 6.

What BALDUIN fays of the Decemvirs conduct with refpect to religious inftitutions, feems capable of a general application. "*Ne* leges facratas *abrogarent* cautum erat, eas itaque non "fuftulerunt, fed quicquid *prætcrea defiderari* videbatur, colle-"gerunt." *Præfat. in comment.* in XII. Tab. CUJACIUS, Lib. 3. cap. 40. *Obfervationum.*

us

us that the laws of Charondas, which the Athenians ufually fang at their banquets, were undoubtedly metrical, as were alfo thofe which Tyrtæus and Terpander fet to mufic, for the ufe of the Lacedæmonian State. To this it might be anfwered, that fuch a cuftom, though perhaps neceffary among a people who poffeffed no written laws, could be of little advantage at Rome. But to wave this argument. It is fufficient to obferve that the paffage itfelf will not juftify fuch an opinion. A variety of inftances might be produced where the word *Carmen* is ufed without any allufion to metrical compofition. CICERO, in his Oration for *Murena*, fpeaking of *the Prætor's Edicts*, fays, "Ei quoque *Carmen* "compofitum eft." And again, *Pro Rabirio*, the expreffion occurs in a fimilar fenfe. LIVY has, "Jurare cogebantur diro quodam *car-* "*mine*;[d]" and GELLIUS quotes a paffage from a work of Cato, entitled "*Carmen* de "moribus" which has nothing metrical either in its found or appearance.[e] In thefe and many other examples which might be adduced, the word plainly fignifies, any thing

[d] Lib. 10. cap. 30.

[e] *Noct. Attic.* Lib. 11. cap. 2.

drawn

drawn up in that concise sententious form, observable not only in the Edicts and Oaths, but in many public Acts and Instruments, both of ancient and modern nations; and in this sense alone it is most reasonable to suppose it was applied by CICERO to the XII Tables.

The other error alluded to, is, that this same writer in his work *De Legibus*, had it principally in view to expound and comment upon the XII Tables, and that most of the laws which occur there, are quoted from this collection. But does not CICERO himself seem to disown this intention, at the very opening of the first book, when he explains the scope and object of his proposed discussion? "I will not, says he, confine my enquiries to the laws and institutions of any particular community, but proceeding on a more enlarged and philosophical plan, will extend them to the general principles of man's social connections, his interests and actions, which must necessarily lead to the discovery of my grand object, the Source of *Universal Law and Justice.*" "Non ergo, " rejoins ATTICUS a Prætoris Edicto, ut " plerique nunc, neque a *XII Tabulis*, ut " superiores, sed penitus ex intimâ Philoso-" sophiâ hauriendam juris disciplinam putas."

Doubt-

Doubtlefs, replies CICERO, and therefore, tho' our own laws are very worthy fuch confi- deration, I fhall not make them the fubject of my difcourfe, "Sed nobis ita complecten- "da in hac difputatione *tota caufa univerfi* "*juris et legum*; ut, hoc civile quod dici- "mus, in parvum quendam et anguftum lo- "cum concludatur naturæ. *Natura enim ju-* "*ris explicanda eft nobis, eaque ab hominis repe-* "*tenda natura:*[f]" from which we may con- clude, that notwithftanding a great number of the Decemviral laws are evidently quoted and referred to by him, they are only occa- fionally introduced, and do by no means con- ftitute any effential part of his plan.

[f] *De Legibus*, Cap. 5, &c.

THE

## P. 13. [B]

THE profeſſion of the law was indebted to the MUCIAN Family for ſome of its moſt illuſtrious characters.[g] It was under their tuition that Cicero imbibed the firſt principles of juridical knowledge, an obligation which is very nobly repaid by the honourable memorials he has left behind of their virtues and accompliſhments. Their inflexible attachment to public buſineſs appeared to be hereditary, and the high compliment which is paid to Q. MUCIUS, the Augur, who at a very advanced age was amongſt the foremoſt in times of danger. "Vigilare, cogitare, adeſſe "animo, ſemper aliquid pro Republicâ aut "facere aut dicere," might with equal juſtice be applied to the whole family.[h] We

[g] "Quorum vero patres aut majores aliquâ gloriâ præſtiterunt, ii ſtudent plerumque in eodem genere laudis excellere: "ut Qu. Mucius. P. Filius in jure civili." *De Off.* Lib. 1. cap. 32.) which is particularly true of the Roman people, among whom, it has been remarked, more inſtances may be found of hereditary profeſſions than in any other ſtate whatever.

[h] Philippic. 8. ſect. 10.

have

have a very ſtriking example of the Patriotiſm of this venerable Stateſman, who at a time of general alarm, though worn down with age and ſickneſs, and almoſt deprived of the uſe of his limbs, took his ſtation in the Senate, where "haſtili nixus, et *animi vim*, et *corporis infirmitatem* oſtendebat.[i]" He is ſaid to have left many uſeful works behind him, and among other learned labours (after his infirmities had prevented his regular attendance in the courts) "Jus civile conſtituit, generatim in libros decem et octo redigendo.[k]" His two brothers were alſo very high in their profeſſion, and diſtinguiſhed themſelves on a variety of occaſions by their learning and public virtues. QU. MUCIUS SCÆVOLA, ſon of the elder of theſe brothers, is particularly celebrated, as having been Cicero's præceptor, after the death of MUCIUS the Augur, under whoſe roof he had till that time been proſecuting the ſtudy of the law.[l] To quote teſtimonies of the eminence of the younger MUCIUS, both as a ſtateſman and a lawyer,

[i] Orat. pro Rabirio. It is not many years ſince our country afforded an excellent companion to this picture.

[k] POMPONII, *Orig. Juris* in DIGEST, Lib. 1. tit. 2.

[l] De Claris Oratoribus. 89.

would be to tranſcribe entire pages from the works of his illuſtrious pupil, who (particularly in his treatiſe "De claris Oratoribus" and in his larger work "De Oratore") ſpeaks of him with uncommon veneration. Comparing him with CRASSUS, his colleague in office, he ſays, "Ut eloquentium juriſperitiſſimus Craſſus, Juriſperitorum eloquentiſſimus Scævola putaretur," and after much more encomium he adds of Scævola, "Quare ſit nobis Orator in hoc interpretandi, explanandique et differendi genere mirabilis, ſic ut ſimile nihil viderim.[m]"

SERVIUS SULPICIUS, another highly diſtinguiſhed character in the profeſſion of the law, was a friend and fellow ſtudent of Cicero,[n] whoſe writings abound with very flattering teſtimonies of his extraordinary talents. After having particularly explained to Brutus

[m] Loc. cit. The whole compariſon of theſe two great Stateſmen is admirably worth conſulting.

For a full account not only of the Mucian Family, but of the general ſtate of Juriſprudence in the 7th century of Rome, ſee an excellent work of F. BALDUIN, entitled, *De Juriſprudentiâ Mucianâ.*

[n] "Nam et in iiſdem exercitationibus, ineunte ætate fuimus; et poſtea una Rhodum ille etiam profectus eſt, quo melior eſſet et doctior." *De claris Orat.* 41, 42.

his

his ſingular happineſs in arranging and interpreting the moſt intricate points of law, and the ſyſtematic manner in which he conducted all public buſineſs, he adds, "Hic enim attulit hanc artem (Dialecticam ſcilicet) omnium artium maximum quaſi lucem, ad ea quæ confuſè ab aliis aut reſpondebantur aut agebantur—Adjunxit etiam et litterarum Scientiam, et loquendi elegantiam, quæ ex ſcriptis ejus, (quorum ſimilia nulla ſunt,) facillime perſpici poteſt.[o]" We cannot but regret being deprived of compoſitions which received ſuch an encomium as this from the mouth of ſo conſummate a maſter in the art; eſpecially when we are told, that it was in a great meaſure owing to the elegant innovations of this laborious lawyer, that Roman Juriſprudence became leſs ſubtile and involved, and that it acquired from his pen a poliſh unknown to any former age. In the writings of SULPICIUS it was found united with the moſt rational philoſophy, cloathed in all the graces of a language then at its meridian, and interſperſed with ſtriking illuſtrations of ancient Uſages, both in public and private life.[p]

[o] Loc. cit.

[p] Something like this was revived in the claſſical labours of ALCIATUS in the 16th Century; and has been happily adopted

What a picture of patriotifm and civil virtue has Cicero given us in that animated Oration which he pronounced before the Senate upon the death of this great Statefman, in confequence of which he obtained from them the nobleft reward which national gratitude can beftow on departed merit, a funeral and Statue at the public charge. Though great allowances are to be made for the ardour of friendfhip, which perhaps never glows ftronger than on occafions like this, yet the uniform ftrain of affection and regret, which fo naturally arifes from the enumeration of his feveral virtues, at the fame time that they place the character of Cicero in an amiable light, leave upon the mind a very deep impreffion in favour of Sulpicius.[q]

ed in our own age, in that juftly popular work "*Obfervations on the Statutes chiefly the more Ancient*.

[q] Among many other fimilar expreffions of praife, he breaks out "Nec vero filebitur admirabilis quædam et incredibilis et "pæne divina ejus in legibus interpretandis æquitate expli- "candâ Scientia. Omnes ex omni ætate, qui hâc in civitate "intelligentiam juris habuerunt, fi unum in locum conferan- "tur cum Ser. Sulpicio non funt comparandi. Neque enim "ille magis *juris* confultus quam *juftitiæ* fuerit." Philippica. 9. Cardinal Bembus called this Philippic, Cicero's "Golden Oration."

It

It has been queſtioned whether the ROMAN Orator himſelf ſhould be ranked among the Profeſſors of the Law. That he is omitted in the catalogue of POMPONIUS and in moſt of thoſe which have been drawn up ſince his time, were it ſtrictly true, would prove very little. But it ſhould be obſerved that, POMPONIUS, though he cannot perhaps be ſaid to have given him a diſtinct place in his catalogue, has nevertheleſs introduced his name in ſuch a manner as leaves little doubt of the high opinion he entertained of his legal abilities. "SERVIUS *in cauſis orandis* primum locum, aut pro certo poſt MARCUM TULLIUM obtineret.[r]"

To every one who is at all converſant with the writings of CICERO, it muſt be evident, that it was his conſtant ambition to diſtinguiſh himſelf as an Orator and a Stateſman, and that to this grand Object the whole ſyſtem of his education, and every circumſtance of his conduct during the early part of his life, was uniformly directed.

This might be illuſtrated by a multitude of inſtances from various parts of his works, but let it ſuffice to remind my reader of that

[r] *De Orig. Juris.* Dig. lib. 1. tit. 2.

very

very intereſting relation of his early ſtudies which he delivers to his friends, Brutus and Atticus, in his diſcourſe "De Claris Oratori- "bus." From this it plainly appears that his attention was principally engaged in the ac- quiſition of ſuch ſplendid accompliſhments as were known to be abſolutely neceſſary in the eminent ſtations he aſpired at, but which for a mere practitioner of the law would at beſt have been thought ſuperfluous.[s] It is not reaſonable to ſuppoſe he would have ſought at Rhodes, at Athens, or in the cities of Aſia Minor[t] for that knowledge, which by his own confeſſion "neque extra Romam uſ- "quam, neque Romæ, rebus prolatis, quid- "quam valet." Whatever inclination he might have had, for the buſineſs of the bar, before he ſet out on his literary travels, he ſought on his return a wider field for the exertion of his talents, and from that time was conſtantly engaged in the moſt active

[s] Cap. 90, 91, &c.

[t] "Cum veniſſem *Athenas*, ſex Menſes cum Antiocho— "fui, ſtudiumque philoſophiæ nunquam intermiſſum renovavi "—Poſt a me *tota Aſia* peragrata eſt cum ſummis quidem Ora- "toribus quibuſcum exercebar—Quibus non contentus *Rho- "dum* veni, meque ad eundem quem Romæ audiveram Molo- "nem applicavi." *Loc. cit.*

ſcenes

ſcenes of public life. Upon theſe circumſtances, and upon ſome diſreſpectful expreſſions which are to be met with in his writings, an opinion has been founded, that Cicero's proficiency in the law was not very great, and that he conſidered the Science in rather an unfavourable light.[u] Occupied however as he was, at firſt in the purſuit, and afterwards in the application of political and philoſophical knowledge, we have the beſt authority for ſuppoſing that he was very far from being indifferent to the more confined ſtudy of the Civil Law, a ſtudy which he frequently acknowledges to be of conſiderable importance in every branch of life, but in a Stateſman and an Orator abſolutely indiſpenſable. In thoſe purſuits, "*perdiſcendum* jus civile, cog-"noſcendæ leges." And again "iis qui per-"fecti oratores eſſe vellent, juris civilis cogni-"tio eſt neceſſaria.[w]" That he alſo reſpected and ſucceſsfully cultivated juridical learning, is evident, not only from the forenſic buſineſs in which we find him ſometimes engaged, but from many expreſs declarations in

[u] Acta Eruditorum, Menſis Martii, Anno 1720.

[w] *De Oratore*, Lib. 1. cap. 34. 44. and indeed the greater part of the firſt book is employed in ſupport of this opinion.

his

his works. "A primo tempore ætatis (ſpeaking of himſelf by the mouth of ATTICUS) "juri ſtudere te memini quum ipſe etiam ad "Scævolam ventitarem, neque unquam mihi "viſus es ita te ad dicendum dediſſe, ut "jus civile contemneres.[x]" "You ridiculed me (ſays he in a letter to TREBATIUS) for aſſerting at table, that it had been a diſputed point, whether an heir could proſecute for a theft committed on his property before he came into poſſeſſion: now though I had drank rather freely and returned home late, I tranſcribed the incloſed caſe, by which you will find I was in the right; but obſerve, though Ælius, Manilius, and Brutus deny the right, my opinion is on the oppoſite ſide of the queſtion.[y]" This ſurely is not ſpoken in the ſtyle of a man ignorant, or ſuperficially acquainted with his ſubject, and when we reflect that it was an opinion confidently given upon a circumſtance ariſing out of one of the moſt intricate and extenſive branches of Roman Law, this letter will perhaps prove more than at firſt ſight may be ſuſpected.

QUINCTILIAN, ſpeaking of a common practice among the young men at Rome, of

[x] *De Legibus.* Lib. 1. cap. 4.
[y] *Epiſt. famil.* Lib. 7. Ep. 22.

de-

deferring to ſtudy the law, till they found there was no probability of ſucceeding as ſtate Orators, and alledging in excuſe for their late application, that they had found it impoſſible to unite theſe two purſuits, adds, as an illuſtrious exception, "MARCUS TULLIUS at the buſieſt æra of his life, not only continued to cultivate the ſcience of the law, but even had begun to *compoſe* ſomething on the ſubject: a plain proof that an Orator, may if he pleaſe, find time to inſtruct both himſelf and others in legal matters.[z]" It is principally with a view to this latter advantage, that CRASSUS (who is ſuppoſed to deliver the ſentiments of CICERO) has pronounced the following fine encomium on the ſtudy of the Civil Law. "What employment is there that can render retirement in the decline of life more glorious and ho-

[z] Lib. 12. cap. 3. *Oratori juris civilis ſcientia neceſſaria.* The compoſition alluded to is probably that mentioned by AULUS GELLIUS, under the title *De jure civili in artem redigendo*; and in that caſe CICERO would ſtand condemned from his own mouth, if he had undertaken ſuch a work without the requiſite qualifications; for he has declared, "Nihil eſt quod *ad* "*Artem redigi* poſſet niſi ille prius, qui illa tenet quorum Ar- "tem inſtituere vult, habeat illam ſcientiam, ut ex iis rebus "quarum Ars nondum ſit, Artem efficere poſſit." *De Oratore.* Lib. 1. cap. 41.

nourable than the Interpretation of the Laws? For my own part I have ever confidered this as the grand object of juridical ftudies, and have from my youth profecuted them, not only with a view to the bufinefs of the Bar, but with the hopes, that when my infirmities fhould prevent my attendance abroad, my houfe would become a general refort of Clients. A Statefman who thus retreats in his old age from the buftle of public life, may fay with the Pythian Oracle in Ennius, that, on his advice, the wills and actions of all his fellow citizens depend; for in fact the houfe of a Counfellor may juftly be called the *Oracular Shrine* of a whole city.[a]" Is it confiftent then to imagine, that, in thofe reflections which Cicero fometimes throws out againft the law, any general fatire on the profeffion was intended? Does he not himfelf point out to us the object of his invective, when, in the Oration for Murena, he exhaufts his whole ftock of raillery on that flimfy fcience (as he terms it) "quæ "prope in fingulis litteris, atque interpunc-"tionibus verborum occupata eft.[b]" And it

[a] *De Oratore.* Lib. I. cap 45.

[b] It was on this occafion that Cato exclaimed "O! Dii bo-"ni, quam ridiculum Confulem habemus!"

fhould

ſhould be obſerved that in the compariſon which is afterwards made between the three moſt honourable occupations at Rome, the preference given to the profeſſions of arms and eloquence, is not founded on any intrinſic ſuperiority, but on the nature of a government whoſe principal honours and rewards were to be obtained only in thoſe two ſtations. "Illud dicam nullam eſſe in illâ diſciplinâ "(*Juris civilis* ſcilicet) munitam *ad Conſulatum* "viam—Quapropter non ſolum *illa gloria* "*militaris*—verum etiam *dicendi conſuetudo* "longe et multum iſti veſtræ exercitationi "*ad honorem* antecellet.[c]" If, in ſhort, Cicero in the heat of his harangue, has declared, that in three days he would engage to profeſs himſelf a complete lawyer,[d] the context ſhews us that no reflection was intended on the honeſt practitioner, but that the ridicule was aimed ſolely againſt thoſe ignorant pretenders, thoſe *leguleii* (as he elſewhere calls them) who with no other qualifications than a ſtring of juridical forms and a ready flow of forenſic jargon, had the vanity to ſuppoſe themſelves perfect maſters of their

[c] Pro *L. Murenâ.* Sect. 11.

[d] Ut ſupra. Sect. 13.

profeſſion, and calculated on that account, to ſhine in the higheſt departments of the State.[e]

[e] CORN van BYNKERSHOEK has handled this queſtion relating to Cicero, in his *Opuſcula varii Argumenti.* §. 46. Lugd. Batav. 1719.

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P. 14. [C]

OF all philoſophical tenets, thoſe of the STOICS appear to have been the moſt generally adopted by the Roman Lawyers. They not only borrowed a great variety of legal terms and definitions from the School of ZENO, but founded many principles of law upon ſtoical notions. We may be convinced of this from what remains of CICERO's *Treatiſe on Laws*, eſpecially the beginning of the firſt Book and the whole of the ſecond, which contains Rules regarding Religion and the Worſhip of the Gods.

The

The close union which subsisted between divine and human law, in ancient Rome, gives additional propriety to what is frequently said of the old Civilians, that they were "Juris *divini* et *humani* periti," and of their profession, that it was "*divinarum* atque *humanarum* rerum notitia.[f]" Both definitions clearly founded upon the stoical one of philosophy, "Illa autem sapientia rerum est *divinarum* atque *humanarum* scientia.[g]

This Sect was so fashionable in Cicero's time, among those who embraced the profession of the law, that it almost excluded the Academic and Peripatetic Philosophy from that particular line. One reason for this preference may be drawn from the character of the stoical School, which being more clear and accurate in its distinctions, and more scrupulous in its definitions, was better calculated than the declamatory Sect of the Platonics for a connection with that Science, which of all others requires the greatest precision and perspicuity.[h] This cir-

[f] *Institut.* Lib. 1. tit. 1.

[g] Cic. *De Officiis.* Lib. 1. c. 43.

[h] It is on his singular excellence in these essential points, that Cicero founds his commendation of his friend Sulpicius.

cumſtance is ſtrongly marked by CICERO, when with a view to ſuch a diſtinct application of theſe Sects to public buſineſs, he draws an admirable parallel between them. He ſeems to be decidedly of opinion that the language of the Stoics was beſt calculated for juridical tranſactions; but the ſtyle of the Academy for the weightier affairs of ſtate and for popular Orations "Omnes fere *Stoici* "prudentiſſimi in *differendo* ſint, et id arte "faciant, ſintque Architecti pæne verbo-"rum; iidem traducti *a diſputando ad dicen-"dum*, inopes reperiantur.—Quod ſi omnia "a philoſophis eſſent petenda; *Peripatetico-"rum* inſtitutis commodius fingeretur *Oratio* "—Nam ut Stoicorum adſtrictior eſt Oratio "aliquantoque contractior quam *aures populi* "*requirunt*, ſic illorum (ſcilicet Academico-"rum et Peripateticorum) liberior et latior "quam patitur *conſuetudo judiciorum et fori*.[i]" A further cauſe for this union of Stoiciſm and Juriſprudence has been diſcovered by ſome writers in the Laws of DRACO, which they conceive to be the remote ſource of the

cius. *De claris Oratoribus*. §. 41. Some particular Lawyers of the Stoic philoſophy are mentioned in the ſame work. §. 30. 41. The Mucian Family were all of this Sect.

[i] Ut ſupra. §. 31.

Roman

Roman law. In this ſevere Code, ſay they, the fundamental principle is known to have been, the ſubjecting all crimes to the ſame degree of puniſhment, to which a celebrated doctrine of the Stoics, namely, the equality of crimes, bears a very exact analogy.[k]

But after all, perhaps the moſt probable reaſon for this connection may be, that contrary to the cuſtom of moſt other Sects, the followers of ZENO and CHRYSIPPUS were not only permitted, but even enjoined to engage in public buſineſs. Πολιτεύεσθαι τὸν σοφὸν was a very favorite poſition of the Stoics; and TACITUS, ſpeaking of this Sect, tells us, that its doctrines made men "turbidos et ne-"gotiorum appetentes.[l]"

From the influence of this philoſophy upon the lives and opinions of ſome of the moſt eminent Civilians, and from the frequent reference which they made to its principles we may account for many laws, whoſe juſtice and conſiſtency will not otherwiſe be thoroughly comprehended. A minute en-

[k] CUJACIUS has produced many points of reſemblance, *Obſervationum.* Lib. 26. cap. 40. which are alſo given by GRAVINA in his Chapter *De Juriſconſultorum Philoſophiâ,* with additional confirmations. *De Ortu.* Cap. 44.

[l] *Annalium.* Lib. 14. cap. 58.

quiry

quiry into the Stoicifm of the Civil Law, might be rendered an amufing and curious work, not only to the Antiquary and the Civilian, but alfo to the claffical fcholar. It would probably clear up many obfcurities in the Roman writers, and illuftrate in fome degree the cuftoms and manners of that people.[m]

[m] See EVERARD OTTO's Preface to his *Thefaurus Juris Romani.* TAYLOR's *Elements of Civil Law.* p. 67, &c.

Hæc duri immota Catonis
Secta fuit, fervare modum, finemque tenere
Naturamque fequi, patriæque impendere vitam
Nec *fibi* fed *toti* genitum fe credere *mundo.*
LUCAN. *Pharfal.* Lib. 2. v. 380, &c.

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## P. 15. [D]

FROM frequent inftances which occur in the firft periods of Roman hiftory, we may infer that the term PRÆTOR was originally applied to almoft all the principal Magiftrates of the State. AULUS GELLIUS cites

cites a law of the XII Tables which condemns ſlaves convicted of theft to be ſcourged and thrown from the rock; with an exception of ſuch as are under age, who are only to ſuffer the former part of the puniſhment *Prætoris* Arbitratu.[n] To what particular office this alludes cannot be clearly determined, for LIVY ſpeaking of the very period when it was made, mentions *Prætor* as a general term, and adds "His enim temporibus nondum "Conſulem, Judicem, ſed *Prætorem* appel-"lari mos fuit,[o]" and the ſame writer in another part of his hiſtory tells us of a law which enjoined "Ut qui *Prætor Maximus* ſit, "idibus ſeptembri clavum pangat,[p]" which may ſignify the Dictator, the Conſul, or in ſhort any ſupreme magiſtrate for the time being. In the year of the city 387 an officer was created by the name of PRÆTOR, into whoſe hands was committed the adminiſtration of juſtice, together with ſeveral other duties which the Kings, and afterwards the Conſuls, had been accuſtomed to exerciſe; and from this time the title ceaſed to be promiſcuouſly applied. The oſtenſible reaſon

[n] *Noct. Attic.* Lib. 11. cap. ult.

[o] Lib. 3. cap. 55.

[p] Lib. 7. cap. 3.

given for the creation of this new officer was, that the Conſuls being frequently obliged to take the field, to repel the incurſions of neighbouring ſtates, it was thought expedient to create a magiſtrate who might ſupply their place, and adminiſter juſtice in the City without being liable to ſuch interruptions. But it is moſt probable from what LIVY ſays, that this office, like many others, originated in that reſtleſs ſpirit of jealouſy which perpetually ſubſiſted between the two orders of the State, and was conſidered rather in the light of a neceſſary conceſſion than of a public advantage. His words are "Conceſſumque ab nobilitate Plebi de Conſule plebeio; a Plebe nobilitati de Prætore uno, qui jus in urbe diceret ex patribus creando.[q]" This office of *Prætor Urbanus* being confined to the Patrician families was always regarded in a very honourable light, and as an intimate acquaintance with the laws was neceſſary for the proper diſcharge of its ſeveral duties, we find that it was uſually filled by the moſt eminent civilians of the age. "Egregia eſt (ſays CICERO of this office) et ad

[q] Lib. 6. cap. 42. Beſides the Prætor Urbanus, there were others called *Peregrini* and *Provinciales*, but the City Prætor had always the pre-eminence.

"Con-

"Consulatum apta Provincia, in quâ laus "æquitatis, integritatis, facilitatis, ad ex-"tremum Ludorum voluptate concluditur.[r]" To this we may add, that the Prætor's tribunal was emphatically called *venerabile legum altare*, and the law delivered from thence *viva vox juris civilis*.

If there be any truth in L^d. BACON's maxim, "as that law is ever the best which leaves least to the breast of the judge, so is that judge the best who leaves least to himself,[s]" the *Cornelian Law*, which made the Annual Edict of the Prætor immutable, must be considered as an excellent institution. It is no uncommon thing to confound this *Annual perpetual Edict*, (if I may use the expression) with the perpetual Edict of JULIAN, or, as it is frequently called, of ADRIAN. GRAVINA's distinction

[r] Orat. *pro Murenâ*. The right of presiding at the public games constituted the principal glory of the Prætor's office and under all the variations which it suffered this privilege appears never to have been lost, either at Rome or Constantinople. Vid. COD. THEODOS. L. 5. 16. *De prætoribus*. The magnificence frequently displayed upon these occasions has been described by many ancient writers, and has afforded JUVENAL a very fair subject for ridicule. *Sat.* 10. v. 36. &c.

[s] See this maxim much extended in his *Speech upon receiving the Seals and taking his Seat in Chancery*.

is worth attending to. "The Prætor's Edict (says he) as regulated by the *Cornelian Law*, was called *perpetual*, because by that law the Prætor was bound to adhere without variation during the year of his office to the rules he he had laid down when he first entered upon it: but in the following year these rules were not considered as binding upon his successor, unless he chose voluntarily to adopt them. ADRIAN's Edict was called *perpetual* because it was not left to the will of any Prætor to adopt or reject it, but was necessarily transferred together with the office, and was regarded by each succeeding magistrate as a Code of invariable and perpetual authority.[t]"

[t] *De Ortu*, &c. cap. 38. The use of the word *perpetuum* in the sense in which it is here applied in the former case is not uncommon in the best writers. CICERO, more than once, has Oratio *perpetua*. CÆSAR, *De Bello Gallico*. Lib. 7. cap. 57. *Palus perpetua*. And TERENCE in the *Hecyra*, Act. 1. Scen. 2. v. 12. makes Philotis say

"Biennium ibi *perpetuum* misera illum tuli."

In all these instances it signifies *uninterrupted continuation, within certain bounds*.

M. BOUCHAUD has thrown abundant light on the judicial law of the Romans in his *Recherches historiques sur les Edits des Magistrats Romains*, especially in that part which treats, *Des Edits des Préteurs*. Tom. 41. Mémoires de l'Académie royale.

THE

P. 20. [E]

THE connection between regal and pontificial power was not peculiar to the Roman State. It is known to have prevailed among the Germans, the Britons, and moſt nations of the north, and is at this day obſervable, we are told, in many of the new diſcovered Iſlands in the ſouthern ocean.

Upon the firſt eſtabliſhment of the ſacred College at Rome, NUMA himſelf had the appointment of the High Prieſthood, and it may be preſumed that his ſucceſſors retained the ſame right, though hiſtory has not afforded us any particular authority for ſuppoſing it. In the ages which followed the abolition of regal power, the nomination was for the moſt part in the hands of the people, aſſembled in Tribes, who ſometimes interfered alſo in the election of inferior prieſts, which properly belonged to the pontificial college. Of both theſe rights they were deprived by SYLLA, who, to revenge himſelf of the popular party, transferred them with ſome other privileges to

to the priests themselves. But in the year of the City 591, about fifteen from SYLLA's death, a law was passed to restore the people to their ancient right of election, which they soon after exercised in favour JULIUS CÆSAR, who was raised to the Sovereign Priesthood by their sole appointment.[u] Though they appear to have been again deprived of this authority by M. ANTONIUS, yet we have certain proof that it was recovered not long after: for on the arrival of AUGUSTUS at Rome, from his Sicilian expedition, the people made him a voluntary offer of the High Priesthood, though LEPIDUS, who had been raised by the means of ANTONIUS to that dignity, was still alive. But AUGUSTUS, whose object it then was, to insinuate himself into the hearts of the public by a shew of moderation and reverence for the laws, prudently waved their offer, and was not prevailed upon to accept it, till the death of LEPIDUS. It was under the emperor TIBERIUS that the people finally lost this right of election, which from that time was transferred into the hands of the Senate,

[u] DIO. Lib. 37. sub. fin. SUETON. *in vit. Cæs.* cap. 13.

who

who continued regularly to exercise it,[w] till among other similar privileges it was swallowed up in the Imperial Power.

The variations which took place not only in the Character of the Sovereign Pontiff, but in the Order and Discipline of the Sacred College, after this period, are very numerous. Among others, we are told that the Emperors, when they claimed the right of nominating to all the Pontificial offices, assumed at the same time that of deciding by their sole authority in cases, which before it had always been usual to refer to the collective body of priests;[x] and that this authority, which was in former times confined to the city of Rome, they extended to the remotest provinces. PLINY has given us an example of this in a letter written when he was Lieutenant Governor in Bithynia, to the Emperor TRAJAN, requesting his orders with respect to an ancient Chapel, which the inhabitants of Nicomedia wished to take down.[y] Ano-

[w] TACIT *Annal.* Lib. I. cap. 15. LAMPRIDIUS has preserved an Oration of Alexander Severus, wherein he returns thanks to the Senate for having made him Augustus, *Sovereign Pontiff* and Tribune. *Vit. Alex. Sever.* cap. 8.

[x] TACIT. Annal. Lib. 2. cap. 59.

[y] Lib. 10. Epist. 58. and again on a similar subject, Epist. 73. 74.

ther

ther ſtriking difference is, that, although during the age of the republic, and for many years after, there never appears to have been more than one Sovereign Pontiff at a time, Hiſtory, confirmed by Medals and Inſcriptions, informs us, that under the Emperors there were many, though it cannot be clearly ſettled when this change was firſt introduced.[z]

It is needleſs to extend this article by entering into any further detail on a ſubject, which has been ſo frequently and ſo ably treated. I refer my reader who wiſhes for particular information, to the excellent works of GUTHERIUS and BOSIUS, in the 5th Vol. of GRÆVIUS, and to ſome elegant Diſſertations by M. le Baron DE LA BASTIE, in the 12th Vol. of the Hiſtory of the Academy of Inſcriptions and Belles Lettres.[a]

[z] The beſt writers ſeem to think it was under the Emperors BALBINUS and PUPIENUS about the year 238.

[a] The title of *Pontifex Maximus* was held of ſuch high dignity, that in Gems and Inſcriptions it almoſt invariably takes place of every other:

CÆSAR PONT. MAX. DICT. TERT.

CÆSAR AUG. PONTIF. MAX.
CONS. QUINT.

is the common arrangement through the whole collections both of GRUTER and SPANHEIM. And CICERO in his Oration againſt PISO, relating the honours he received on his return from exile, ſays, "Me in eâ ipſâ domo quâ tu me expuleras, "*Pontifices*, Conſules, Patres Conſcripti collocaverunt."

## P. 25. [F]

THE circumſtances which concurred to raiſe AUGUSTUS to the empire, and the means he uſed to improve them, are thus conciſely given by TACITUS, in the opening of his Annals, "Poſtquam BRUTO et CASSIO "cæſis, nulla jam publica arma, POMPEIUS "apud Siciliam oppreſſus, exutoque LEPIDO, "interfecto ANTONIO, ne Julianis quidem "partibus niſi CÆSAR dux reliquus; poſito "triumviri nomine, conſulem ſe ferens, et ad "tuendam plebem tribunitio jure conten-"tum; ubi militem donis; populum annona; "cunctos dulcedine otii pellexit." The firſt ſtep taken by him to ſecure his ſovereignty over the Roman people, was the diviſion of the provinces, and a more politic diſtribution could not perhaps have been deviſed.[b] Into the hands of the Senate he inſiſted upon

[b] In this diviſion the SENATE held—Africa—Numidia—Aſia and Greece on the continent—Dalmatia—Macedonia—Sicily—Crete—Libya—Bithynia with Pontus—Sardinia, and Bætica——

AUGUSTUS retained in Spain, the diſtricts of Iberia—Tarraco and Luſitania—Gallia Narbonnenſis and Lugdunenſis—Aquitania—

committing all thoſe that had already ſubmitted to the Roman arms, and that were (from the general tranquillity and ſatisfaction which then prevailed among them) proper objects of civil juriſdiction. The ſtubborn and refractory provinces he thought it prudent to retain himſelf till ſuch time as they ſhould be brought into a more manageable ſtate. A propoſal apparently ſo much to his own diſadvantage, was readily embraced by the ſhort ſighted Senate. They did not conſider that they were placing him at the head of a large military eſtabliſhment, by the prudent management of which he might at any time overawe their councils, and in the end anihilate their authority. If indeed we conſider what humiliating and unconſtitutional meaſures the Senate had already not only countenanced, but propoſed in favour of Auguſtus,

tania—Celtica and all the Country of the Rhine—Cælofyria—Phœnicia—Cilicia—Cyprus, for which and the diſtrict of Narbonne he afterwards received Dalmatia and Egypt. Dionys. Lib. 53. For a general knowledge of the State of the Roman Provinces conſult Car. Sigonius *De antiquo jure Provinciarum*; but for more accurate information, F. Robortellus *De Provinciis Romanorum et earum diſtributione atque adminiſtratione*, in the 3d Vol. of Grævius; a work extremely valuable both in a geographical and a political light.

tus, and its wilful blindneſs to ſo many of his overacted ſcenes of hypocriſy, we cannot readily conceive why he ſhould have choſen to engage himſelf in dangers and difficulties to ſecure the poſſeſſion of that which he appeared already to have ſo much in his power. But the ſalutary councils of AGRIPPA and MECÆNAS, or (what perhaps had far greater weight) the awful example of his predeceſſor, had warned his ambition to purſue the ſame object by a different route. Inſtead therefore of appearing to be gratified by every act of ſervile liberality which a temporizing ſett of men were ready to confer upon him, he affected, under the maſk of moderation, to acquire all his dignities by legal and regular meaſures. Thus it happened that by a gradual accumulation of honours and offices, he was able, as Tacitus ſays, "Paulatim munia "Senatus, Magiſtratuum, Legum in ſe tra"here," and with a ſeeming ſollicitude for the welfare and proſperity of the Roman State, he appears to have left at his death little more than "Morientis Reipublicæ veſ"tigia."

Perhaps the government of Rome, during the laſt years of AUGUSTUS, may be conſidered as ſomething analogous to that of Eng-

land, at the beginning of the 17th Century, a ſimple and unmixed Monarchy, whoſe popular aſſemblies were thought to form only the ornament of the fabric without being in any degree eſſential to its exiſtence. At leaſt this ſeems to have been a prevailing idea among the beſt writers of thoſe times, who deſcribe it as "a *prerogative* government, where *Book law* in moſt caſes yielded to *Lex loquens*, and where whatever was done by the King, with the advice of his Privy Council, was looked upon as done in fact by the King's abſolute power.[c]" A very ſtriking deſcription of the principal features of Roman Polity, particularly of thoſe new arrangements which had taken place under AUGUSTUS, between the SENATE, the EMPEROR, and the COUNCIL. There is therefore a manifeſt inconſiſtency in thoſe writers who attempt to deſcribe the conſtitution of the Roman State as immaterially affected by this revolution. They tell us that the image of the old republic is very diſcernible in the perſon of the Emperor;

[c] RALEIGH'S *Maxims of State* and his *Prerogatives of Parliaments*, p. 17, &c. LORD BACON'S *Political Works* paſſim.

that

that as he did not profeſs to be, neither in fact ought he to be, conſidered as abſolute ſovereign of that mighty empire; that he held only a *temporary*, *delegated power*, which could be at pleaſure reſumed by thoſe from whom he had received it, and that this power did not conſiſt in his ſingle will and authority as ſupreme, but was compoſed of the various ſpecies of duties and prerogatives annexed to the different offices in the republic, which inſtead of being *ſeparately* exerciſed as formerly, were then *united* in the perſon of the emperor. But ſurely this very circumſtance is ſufficient to prove to us what was the nature and extent of his Authority, and to convince us that (however artfully gloſſed over) the power of AUGUSTUS was as abſolute and extenſive as any which the moſt ambitious of his ſucceſſors ever enjoyed. The following remark of LORD SHAFTESBURY places this ſubject in ſo true a light and is expreſſed with ſo much elegance, that I ſhall make no apology for ſubjoining it at length. "It was the friendſhip of MÆCENAS, which turned a Prince naturally cruel and barbarous to the love and courtſhip of the *Muſes*. Theſe Tutoreſſes formed in their royal pupil a new nature.

They

They taught him how to charm mankind. They were more to him than his arms or military virtue; and, more than Fortune herſelf, aſſiſted him in his greatneſs, and made his uſurped dominion ſo enchanting to the world that it could ſee without regret its chains of bondage firmly rivetted. The corrupting ſweets of ſuch a poiſonous government were not indeed long lived. The bitter ſoon ſucceeded: and in the iſſue, the world was forced to bear with patience thoſe natural and genuine tyrants who ſucceeded to this ſpecious machine of arbitrary and univerſal power.[d]"

[d] *Advice to an Author.* Part. 2. ſect. 1.

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## P. 46. [G]

"WE cannot ſufficiently admire the wiſdom and goodneſs of Providence (ſays the excellent Writer on *The Uſe and Authority of the Roman Law in Chriſtian Nations*) who ſometimes makes the vileſt inſtruments ſubſervient to the nobleſt purpoſes: For it is

worthy

worthy to be remarked, that, notwithſtanding the infamous lives and characters of many of the Roman emperors who preceded CONSTANTINE, their laws and conſtitutions are invariably framed according to the ſtricteſt rules of equity, and breathe a uniform ſpirit of piety and wiſdom. The language alſo in which they are compoſed is conciſe, elegant, and full of that dignity which the various occaſions required. This is no doubt to be attributed to that laudable cuſtom (which the worſt of emperors condeſcended to adopt) of ſubmitting their intentions to be diſcuſſed by men ſkillful in the laws, and of delivering into their hands the charge of compoſing and publiſhing the Imperial Conſtitutions.[e]" This was never better illuſtrated than in the conduct of the emperor ALEXANDER SEVERUS, who not only conſigned the buſineſs of framing the laws which were to be propoſed, to a certain number of the moſt celebrated Civilians, but even afterwards witheld his ſanction from them till he had taken the opinion of his council, which was compoſed of none but men of approved integrity and abilities; nay he carried this cir-

[e] DUCK. *De uſu et Auctoritate*, &c. Lib. 1. cap. 3.

cumſpection

cumſpection ſtill further; for if the law to be paſſed had reference to military arrangements, a council was then formed of ſuch veteran officers as were moſt eminent for their ſkill and experience, and upon their judgement ſolely the iſſue of the affair depended.

After the removal of the ſeat of empire there is a ſtriking difference both in the ſpirit and letter of the Imperial Law. To be convinced of this it will be ſufficient to compare the Conſtitutions of Nero, Domitian, Commodus and Caracalla with thoſe of Martian, Leo, Zeno and Anaſtaſius. It will be found that the latter, beſides other points of inferiority, are written in an affected and verboſe ſtyle and contain ſo little of that dignity which characterizes the former, that they might more naturally paſs for the extempore flouriſhes of an orator than for the mature decrees of an imperial ſynod. From this circumſtance we may conjecture was derived that general preference which ſince the revival of the Roman Civil Law has ever been given to JUSTINIAN's Code. It is there alone that we meet with the excellent Conſtitutions of the firſt imperial æra: whereas the Code of THEODOSIUS, which commences with the laws of

CON-

CONSTANTINE, muſt neceſſarily be regarded as deficient in the moſt valuable materials, namely, the laws and inſtitutions prior to that emperor's reign.

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## P. 47. [H]

"HÆC autem tria volumina a nobis compoſita tradi eis, tam in *Regiis Urbibus*, quam in *Berytienſium* pulcherrimâ civitate, quam et legum Nutricem bene quis appellet, tantummodo volumus: quod jam et *a retrò Principibus*, conſtitutum eſt et *non in aliis locis*, quæ a majoribus tale non meruerint Privilegium."[f] This injunction of JUSTINIAN, together with what follows, to prohibit teaching the law at Cæſarea, at the ſame time that it marks out the cities of ROME, CONSTANTINOPLE and BERYTUS, as the only privileged ſeminaries for that purpoſe, informs us that this was no new diſtinction, but had prevailed under

[f] CONSTITUTIO. *Omnem reipublicæ noſtræ ſanctionem*, &c. in Præf. Digeſtorum.

former emperors.[g] It may not be amiſs to take a ſummary view of this ſubject.

Before the eſtabliſhment of a Public Academy for the ſtudy of the Law, it was uſual at Rome for men of eminence to give Lectures in their private houſes to the youth intended for that profeſſion. There were others alſo, who, though they did not profeſſedly teach this ſcience, yet by reaſon of their conſummate ſkill in civil matters, and the known wiſdom and equity of their juridical opinions were conſtantly attended in their courſe of public buſineſs by a train of Students. "Alii "de jure reſpondent, docent alii et eodem "tempore et *diſcentibus* ſatisfaciunt et *conſu-* "*lentibus*.[h]" The connection between Cicero and Scævola was of this nature. "Ego autem, ſays he, Juriscivilis ſtudio "multum operæ dabam Qu. Scævolæ P. F. "qui quanquam nemini ſe ad *docendum* dabat,

[g] Yet, notwithſtanding this, Laodicea is expreſsly mentioned in a law of Severus as a great reſort of Students. Cod. Justinian. Lib. 10. tit. 39. And Agathias, Lib. 2. *De Geſtis Juſtinian.* Speaking of the ſame earthquake which deſolated Berytus, adds, "it extended alſo to Alexandria, where I myſelf then reſided for the ſake of proſecuting my law ſtudies.

[h] *De Oratore.* Lib. 1. ſect. 45.

"tamen

"tamen *consulentibus respondendo, studiosos au-*
"*diendi docebat.*[i]" This mode of training up young men in the study of the Laws, and of accustoming them to forensic business, was equally liberal and beneficial, and (as we have seen on a former occasion) was considered by the first characters in the State as a certain source of comfort and honour, reserved for that time of life when they should no longer be capable of other occupations.

The first regular institution of a Seminary in which the Law was publicly taught at Rome, appears to be in the reign of ADRIAN, about the year 130. This Emperor, conceiving that the usual method of acquiring legal knowledge, notwithstanding it had its advantages, was upon the whole deficient and precarious, founded an Academy called ATHENEUM, and appointed Professors in the various branches of learning to preside over the studies of the youth, who should thenceforth resort to Rome for the purpose of education. "Cærimonias, *Leges*, gym-
"nasia, *Doctoresque* curare occæpit, adeo qui-
"dem ut etiam ludum ingenuarum Artium
"quod ATHENEUM vocant constitueret.[k]"

[i] *De Claris Orat.* sect. 89.

[k] AUREL. VICTOR. *Lib. de Cæss.* ADRIAN.

To this eſtabliſhment ALEXANDER SEVERUS made conſiderable additions, and appointed regular ſalaries to the different Profeſſors. What their original number was is not certain. In the reign of THEODOSIUS we are told they amounted to nineteen, namely, three Orators, ten Grammarians, three Sophiſts, one Philoſopher, and two Civilians; all of whom, under a ſevere penalty, were forbidden to give any lectures in private.[1] In the law which enjoins this, it is to be obſerved, the public Academy is termed *Capitolii Auditorium*. "Ex eorum "numero qui videntur intra *Capitolii Auditorium* conſtituti, hi omnibus modis, *privatarum ædium* ſtudia ſibi interdicta eſſe cognoſcant," from whence ſome have conjectured that a ſeminary diſtinct from the

[1] Lib. 11. tit. 18. COD. JUST. *De Studiis liberalibus Urbis* ROMÆ et CONSTANTINOPOLITANÆ. CASSIODORUS has given us a very liberal Epiſtle of ATHALARIC the Oſtrogoth, in anſwer (as it ſhould ſeem) to a complaint made by the Profeſſors of this very Academy, wherein he inſiſts upon their being regularly paid their reſpective ſalaries, without any deduction. "Cum enim manifeſtum ſit Præmium Artes nutrire, nefas "judicavimus Doctoribus adoleſcentium aliquid ſubtrahi, qui "ſunt potius ad glorioſa ſtudia per commodorum augmenta "provocandi." Lib. 9. Epiſt. 21.

Atheneum

Atheneum is here ſpoken of: But it ſeems moſt probable, as DONATUS obſerves, that ſince ADRIAN's School is frequently called *Capitolii Auditorium*, from its ſituation in the Capitol, in other inſtances, it is alſo pointed out under this name in the law in queſtion:[m] and this ſeems to be further confirmed by conſiderinng that the public Seminary at Conſtantinople was ſometimes called *Capitolii Auditorium* for a ſimilar reaſon. Though the cultivation of juridical learning was by no means the ſole, or even the principal, intention of this Academy, it is evident that to this branch of Science alone it was afterwards indebted for its celebrity. Seminaries had, even before the time of ADRIAN, been founded in various provinces of the Empire, in which every ſpecies of polite literature

[m] DONATUS *De Urbe Româ*, Lib. 2. Cap. 9. The *pergulæ Magiſtrales*, prohibited in this law, and of which we find on other occaſions frequent mention, were a ſort of private Schools. SUETONIUS ſpeaks of one L. Craſſitius who, ſays he, "in *per-*
"*gulâ* docuit, ſed cum edoceret jam multos ac nobiles demiſsâ
"repente *Scholâ* tranſiit ad Q. Septimii philoſophi Sectam."
*De illuſt. Grammaticis*. Sect. 18.

"Sed nec ſtructor erit cui cedere debeat omnis *Pergula*."
JUV. *Sat*. 11. v. 136.

And VOPISCUS, *in Saturnino*. "Fuit revera non parum literatus; nam Romæ frequentaverat *pergulas* Magiſtrales."

was

was ſucceſsfully taught; and many laws are to be met with in ſubſequent periods which particularly provide for their augmentation and encouragement: One, very ſtrongly marked, occurs in the Theodoſian Code under the title *De Medicis et Profeſſoribus.*[n] It is a Reſcript of the Emperors VALENS and GRATIAN to the Prætorian Præfect of Gaul; "De conſtituendis per omnem diœceſin in "frequentiſſimis civitatibus, qui erudiendæ "præſideant juventuti, *Rhetoribus* et *Gram-* "*maticis* Atticæ et Romanæ Doctrinæ." This plainly ſhews us that it was by no means neceſſary for the provincial youth to incur the expence and fatigue of a journey to the metropolis for the more elegant branches of education;[o] yet that the reſort thither was very great, even in the declining ſtate of the Empire, cannot be diſputed. The fact is, that although philological ſtudies, and every ſpecies of philoſophy, might be proſecuted in the provincial Academies, it was at ROME

[n] Lib. 13. tit. 3.

[o] Many indeed of the richer claſs, we are informed, thought it neceſſary to reſide ſometime at Rome in order to complete and give the laſt poliſh to their ſtudies, or, as it is expreſſed, "Ut Ubertatem Gallici nitoremque ſermonis, Gravitas Ro- "mana condiret:" but this was certainly not a general cuſtom.

alone,

alone, and afterwards at BERYTUS and CONSTANTINOPLE that both the theory and practice of Jurisprudence was to be acquired. Of this the following passages from writers of the fourth and fifth centuries may serve to convince us.

SIDONIUS APOLLINARIS in an epistle to EUTROPIUS, advises him to go ROME, expressly for the purpose of studying the Law in a City which he emphatically calls *Domicilium Legum:*[p] and RUTILIUS, in his *Itinerary*, says of PALLADIUS, who resided some time in Rome,

"Facundus juvenis Gallorum nuper ab arvis
"Missus, *Romani discere jura fori.*[q]"

In GIANNONE'S *History of Naples* are quoted the following lines from a Life of ST. GERMAIN, of the fifth century:

Incitus his animus, talique cupidine raptus,
Qua caput est orbis terrarum Maxima Roma
Tendit iter, *Latii nodos addiscere juris,*
Et didicit, palmamque brevi tulit ille laboris.[r]

[p] Lib. 1. Epist. 6.

[q] RUTIL. NUMANTINI *Itinerar.* Lib. 1. v. 207.

[r] Ist. di Napoli. Lib. 1. cap. 10.

And

And of the ſame perſon we are told by his Biographer CONSTANTIUS, "Ut in eum "perfectio literarum plena conflueret, *poſt* "*auditoria Gallicana, intra Urbem Romam,* "*juris ſcientiam* plenitudini perfectionis ad-"jecit.[s]" ST. AUGUSTINE, ſpeaking of his pupil and friend ALIPIUS, ſays, "Non ſane "relinquens incantatam ſibi a parentibus "terrenam viam, *Romam proceſſerat ut Jus* "*diſceret*;" and in the ſame chapter we are told of the flouriſhing ſtate of moſt other kinds of learning at that time [the middle of the fourth century] in the ſchools of Africa.[t]

Many other authorities might be adduced to prove, that, after the inſtitution of the ATHENEUM, the grand object which for ſome centuries drew the youth of the weſtern provinces to the Mother City, was the ſtudy of the Law, but the foregoing may be thought ſufficient.

When we conſider what an immenſe number of Students from various nations, of different characters and conditions, were aſſembled together in one city, it is natural to ſuppoſe that frequent irregularities muſt have oc-

[s] Vit. S. Germ. cap. 1.

[t] Lib. 5. Confeſſ. cap. 8. ST. AUGUSTINE was for ſometime employed in the education of youth at *Carthage*, but left it,

curred which would require the interpoſition of law to adjuſt, and that ſome general Code of regulations for the direction of the ſtudies and morals of the Academicians muſt have been compiled for this purpoſe at the firſt eſtabliſhment. We have, it is true, a few ſcattered notices of ſome ſuch regulations made as occaſion required, under the different emperors. But from the nature and tendency of theſe, there is great reaſon to believe, that no uniform Code ever exiſted among them. Hence it happened, that in the time of the Emperors VALENTINIAN and VALENS, the diſorders which, for want of proper diſcipline, had for many years been gradually growing up, were arrived at ſuch a pitch of extravagance, that they called aloud for the interference of imperial authority to repreſs them. "Hi omnes" (ſays AMMIA-

it, as he informs us, becauſe of the licentious and turbulent behaviour of the Students, which was very oppoſite to the character he had heard of the Roman youth. Of theſe however we find he ſoon had heavy cauſe of complaint: among other things, he mentions a very mean artifice much practiſed there. In order to avoid paying for their lectures, which it was not cuſtomary to do till the end of the courſe, the young men would frequently withdraw themſelves a few days before the concluſion. Loc. cit. cap. 12.

S NUS

NUS MARCELLINUS of the Roman youth of thoſe times) "quod vivunt et vino et teſſeris "impendunt, et luſtris et voluptatibus et "ſpectaculis; eiſque templum et habitacu- "lum et concio et ſpes omnis, Circus eſt "Maximus.[u]" Nor were theſe vices of ſudden growth, for we hear a writer of an earlier age complaining: "Propria et peculiaria "Urbis vitia, quæ pene in ipſo utero matris "concipi videntur *hiſtrionalis favor* et *gladia-* "*torum equorumque ſtudia*;" to which he very pertinently adds, *Quibus occupatus et obſeſſus animus, quantulum loci bonis artibus relinquit!* [w]

It was with a view of reſtraining theſe irregularities, and of introducing a ſtricter diſ-

[u] Lib. 28. cap. 25. And for a further account of the corrupt ſtate of the Academy, ſee the ſame author, Lib. 14. cap. 6. and Lib. 28. cap. 4.

How different from this is a deſcription given us by FORTESCUE of the morals and diſcipline of our own Law Seminaries in his days! "Here," ſays he, "the youth apply con- "ſtantly to their juridical ſtudies, and on holidays to the read- "ing of the Holy Scriptures; and after the hours of divine "ſervice to the peruſal of ancient chronicles. Here virtue "may be ſaid to be truly cultivated, and vice exiled, inſomuch "that the nobility and gentry place their children here merely "from motives of *œconomy* and *good morals*." De Laudibus Leg. Angliæ, cap. 49.

[w] TACITUS or QUINCTILIAN. *Dial. De Oratoribus*, cap. 29.

cipline,

cipline, that the Emperor VALENTINIAN in the year 370 promulged that celebrated Conſtitution " *De ſtudiis liberalibus Urbis Romæ et Conſtantinopoleos*,[x] with ſome particulars of which my readers may not be diſpleaſed to be made acquainted.

It contains eleven diſtinct regulations, in ſubſtance nearly as follow: The young men who come to ſtudy at Rome are required to bring Letters Dimiſſory from the Governor of the province in which they live, ſetting forth their place of birth, their age, their qualifications, and the rank and condition of their parents. Immediately on their arrival they are to deliver theſe letters into the hands of the Cenſors, whoſe duty it then is, to enquire of them the line of ſtudy they mean to purſue, and to procure them convenient lodgings. The law proceeds afterwards in theſe words; " Iidem immine-" ant *Cenſuales*, ut ſinguli eorum tales ſe in " conventibus præbeant, quales eſſe debent, " qui turpem, inhoneſtamque famam et con-" ſociationes (quas proximas putamus eſſe " criminibus) æſtiment fugiendas; neve *Spec-" tacula frequentius adeant* [y] *aut adpetant vulgò*

[x] COD. THEODOS. Lib. 14. tit. 9.

[y] Many other reſtrictive laws are to be found upon this ſub-

 ject

" *intempeſtiva convivia.*[z] Quinetiam tribuimus
" poteſtatem, ut ſi quis de his non ita in
" urbe ſe geſſerit, quemadmodum liberali-
" um rerum dignitas poſcat, publice verberi-
" bus adfectus, ſtatimque navigio ſuperpo-
" ſitus, abjiciatur urbe, domumque redeat."
—The Emperor then preſcribes the time which he thinks neceſſary for the completion of their ſtudies; this he limits to their 20th year. Whereas at BERYTUS the Students were permitted to continue till their 25th; and there is an expreſs Edict of DIO-

ject in the THEODOSIAN CODE, eſpecially Lib. 14. tit. 2. *De Rectoribus Provinciæ*, and Lib. 15. tit. 5. *De Spectaculis.* See alſo the latter part of LIBANIUS's Oration Πεϱι των δεσμωτων, addreſſed to the Emperor Theodoſius.

[z] Theſe injunctions remind us of the following lines in PETRONIUS.

" Artis ſeveræ ſi quis amat effectus
" Mentemque magnis applicat, prius amore
" *Frugalitatis lege* polleat exactâ,
" Nec curet alto Regiam trucem vultu,
" Clienſque *cœnas impotentium captat*;
" Nec, perditis addictus, *obruat vino*
" *Mentis calorem*, neve *plauſor in Scenâ*
" Sedeat redemptus, *hiſtrioniæ addictus.*"

Satiricon, p. 18.

An Inſcription which might with great propriety be placed over the portal of many of our modern Academies.

CLETIAN to this purpose, which JUSTINIAN appears to have thought the more reasonable of the two, and has admitted it into his Code.[a] It is also agreeable to the opinion of the best civilians: "For," says ULPIAN, "I do not think that a young man can with "any advantage, either to himself or others, "enter into public life, or engage in any pro-"fession, before his 25th year.[b]"

After some regulations of less consequence, the Emperor in the last clause enjoins the Præfect of the City to keep a monthly register of the conduct and proficiency of every Student, and to send it annually for his inspection, in order that he may form a judgment of their respective merits, and be enabled to select out such as are fittest to succeed to the different offices and departments of the state.[c]

Such is the general outline of this celebrated Law, which being sanctioned by no less authority than that of the Prince himself, could hardly fail of producing the intended

[a] Lib. 10. tit. 49. De iis qui ætate et professione se excusant.

[b] De Muneribus et Honoribus, Lib. 8.

[c] It is with a view to this noble object that JUSTINIAN concludes his preface to the Institutes.

reformation.

reformation. It is rather remarkable that the compilers of JUSTINIAN'S Code have not admitted it into that work, eſpecially as there are frequent references to regulations of this nature.[d] The reaſon perhaps might be, that it appeared to them a proviſion againſt ſome temporary diſorders, which, as they no longer ſubſiſted, the law would at that time be without meaning or effect; but this, as GOTHOFRED obſerves, was a very inſufficient cauſe for rejecting it: "Aliis enim tempo- "ribus et occaſionibus, hac etiam ætate uti- "liter aptari poſſit.[e]"

While ROME was thus regarded as the moſt flouriſhing Academy in the weſtern Empire, and the only one ſet apart for juridical ſtudies: BERYTUS, or BEROE (as it is frequently called) a city in Phœnicia, was held of equal reputation in the Eaſt. At what time it was founded is not certain. NONNUS of PANOPOLIS, a writer of the fifth century, in his *Dionyſiacs*, declares Sa-

[d] Lib. 1. tit. 17. *De veteri Jure enucleando*, and a Law of VALENTINIAN, bearing the ſame title with this. Lib. 11. tit. 18.

[e] There is an excellent Commentary upon this Law by HERMANNUS CONRINGIUS, in the third volume of DE SALLENGRE'S *Supplement to* GRÆVIUS. And alſo in J. GOTHOFRED'S Edition of the Theodoſian Code.

turn

turn to have been the founder; and ſpeaks of it as the moſt ancient city upon earth—πρωτοφανης Βεροη[f]. He tells us alſo, that as early as the days of AUGUSTUS, it was a celebrated Seat of Juriſprudence,

——————Δικης πεδον
Αστυ Θεμιστων[g]———

and proceeds to laviſh upon it every epithet and expreſſion of praiſe, calling it

Ενδιον Ευφροσυνης, Παφιης δομος, οικος ερωτων,
Αστρον αρουρης—χαριτων θαλος.[h]

MENAGE, in his *Amœnitates juris civilis*, ſays that GREGORY THAUMATURGUS, who lived near the middle of the third century, is the earlieſt writer who makes any mention of Berytus as a Seminary of Law. It is in his *Panegyric Oration of* ORIGEN, where he tells us, that being animated with an ardent deſire of ſtudying the Roman Law, he ſet out for that purpoſe to BERYTUS, a great and

[f] Lib. 41. v. 69. et 85. This is alſo the opinion of STEPHANUS OF BYZANTIUM. Vid. περι πολεων, artic. Byzant.

[g] Ut ſup. v. 360.

[h] Lib. 41. paſſim. This city was called by Auguſtus *Julia Felix*. "BERYTUS, colonia quæ *felix Julia* appellatur." PLIN. *Hiſt.* Lib. 5. c. 20. Its preſent name is BARUT. It ſtands upon the coaſt about 16 miles N. of Sidon, but retains no trace of its ancient ſplendour, except the ſtriking beauty of its ſituation. MAUNDRELL'*s Journey from Aleppo to Jeruſalem*, p. 38, &c.

flouriſhing

flouriſhing ſeat of learning.[i] Diocletian's Edict, which was addreſſed in the year 287 to the Law Students in Arabia, who dwelt at BERYTUS, is a further teſtimony of its celebrity at that time. A Geographer of the fourth century ſpeaks of it as a delightful city, abounding in ſchools of juridical learning, whoſe ſtudents go forth to diſpenſe juſtice over the provinces, and to preſide at the various tribunals of the empire.[k] The ſingular mark of favour which it received a few years after from the Emperor VALENTINIAN, is ſtrongly expreſſive of its dignity and conſequence. The law which confers the favour is comprized in the following terms: "Propter multas juſtaſque "cauſas *Metropolitano* nomine ac dignitate "civitatem BERYTUM decernimus exornan-"dam, jam ſuis virtutibus coronatam. Igi-"tur hæc quoque *Metropolitanam* habeat dig-"nitatem. TYRO nihil de jure ſuo derogetur. "*Sit illa mater provinciæ majorum noſtrorum* "*beneficio; hæc noſtro; et utraque dignitate* "*ſimili perfruatur.*[l]" In the following cen-

[i] *In Panegyr. ad Orig.* p. 14.

[k] *Vetus orbis deſcriptio, ſub Conſtantio et Conſtante*, cap. 17, ſect. 3. firſt publiſhed by J. GOTHOFRED, with notes and illuſtrations at the end of his edition of LIBANIUS.

[l] COD. JUSTINIAN. Lib. 11. tit. 21. De Metropoli Beryto.

In

tury we find it very honourably mentioned by JUSTINIAN, who ſtiles it "Civitas pul-"cherrima et nutrix legum;" he moreover paid it the compliment of calling in DOROTHEUS, one of its profeſſors, to aſſiſt in his celebrated compilation.[m] It was not long after this period that the glory of this City was almoſt extinguiſhed by a diſaſter which AGATHIAS records in the following manner: "At this time a terrible earthquake laid "waſte many parts of the empire. Among "the reſt BERYTUS, the moſt beautiful City "of Phœnicia, (εγκαλλωπισμα Φοινικης) was ſo "miſerably deſolated that ſcarce any traces "remained of all thoſe magnificent edifices "for which it was ſo much admired. Not "only a vaſt number of the natives periſhed, "but many noble and illuſtrious youths, who "had reſorted thither for the purpoſe of "ſtudying the Roman Law, were buried in "the ruins. They who eſcaped, together "with many of the profeſſors, retreated to

In conſequence of this ſingular privilege, we find many laws in the Codes bearing a double ſubſcription. Thus in the Law *De Tyronibus*, Lib. 7. tit. 13. COD. THEODOS. the ſubſcription runs, "Dat. Tyro Metropoli, P. P. Berytto. It was firſt made known at TYRE, but afterwards promulged at BERYTUS.

[m] In Præfat. Digeſt.

" Sidon, a city in the neighbourhood, and " there continued to proſecute their ſtudies " till BERYTUS was reſtored. This was ac- " compliſhed a few years after, but in a man- " ner very inferior to its former ſtate[n]" The diſcipline and ſtudies of this Academy appear to have been entirely on the plan of the other two, except, as we are told, in having four Profeſſors of Law, who delivered their lectures in the greek language,[o] whereas at ROME and CONSTANTINOPLE there were two only, and they read in latin.

The public Seminary at CONSTANTINOPLE cannot boaſt of equal antiquity with thoſe of ROME and BERYTUS, nor does it appear ever to have been ſo univerſally celebrated. As early as the year 332, CONSTANTINE had opened a road to ſome literary eſtabliſhment of this nature, by founding a public Library in his new metropolis. This foundation was ſoon after conſiderably augmented and improved by the Emperors CON-

[n] AGATHIAS, *Hiſt. Geſt. Juſtinian.* Lib. 2. p. 4.

[o] GOTHOF. *Prolegom. ad cod. Theodoſ.* STEPHANUS of BYZANTIUM ſays that the celebrated SANCONIATHON was a native of Berytus, but SUIDAS, and after him L'Abbé BANIER, fixes his birth-place at Tyre.

STAN-

STANTIUS and JULIAN; and in the year 372, by a law of VALENS, ſeven officers of approved ſkill in the greek and latin languages, were appointed to ſuperintend the library, and to repair and tranſcribe the books.[p] Notwithſtanding this apparent zeal for the intereſt of learning, we have no reaſon to believe that any Academy, inſtituted and regulated by public authority, was known in this city for half a century from the period laſt mentioned.[q] The earlieſt account of ſuch an eſtabliſhment is to be found in a law of the younger THEODOSIUS, A. D. 425.[r] It opens with a ſevere prohibition againſt ex-

[p] DU FRESNE. *Conſtantinopolis Chriſtiana*, Lib. 2. p. 149. 150. COD. THEODOS. Lib. 14. tit. 9. *De Antiquariis*, &c. The term *Antiquarius*, or ἀρχαιογράφος, is frequently uſed in this ſenſe by ancient authors. It is, ſays GOTHOFRED, in his comment on this law, one "qui codicibus componendis vel pro vetuſtate "reparandis vacaret."

[q] It may be urged that VALENTINIAN's Law, A. D. 370. *De Studiis liberalibus*, &c. COD. THEODOS. Lib. 14. tit. 9. neceſſarily ſuppoſes the exiſtence of a public Academy at that time in Conſtantinople. That Students reſided there cannot be doubted, but there is no reaſon for concluding them claſſed under any regular eſtabliſhment, eſpecially as many expreſſions in the law ſeem to imply the contrary.

[r] COD. THEODOS. Lib. 14. tit. 9. L. *De profeſſoribus qui in Urbe Conſtantinopolitanâ*, &c.

ercising the office of teacher or professor of any Art or Science in a private manner, with a particular exception, however, in favour of such as confine their instructions to one family, in which they may receive a certain salary as private tutors. The penalty annexed to the infringement of this injunction is nothing less than immediate expulsion from the City.[a] The next clause in this law regulates the number of public professors in each separate science, the whole establishment amounting to thirty-one; and here we may observe, that in settling this matter the Emperor seems to have bestowed a peculiar mark of distinction upon the professors of Philosophy and Law, for having named all the others in a cursory manner, he concludes, "Et "quoniam non his artibus tantum adolescen-"tiam gloriosam optamus institui, *profundio-"res* quoque Scientiæ atque Doctrinæ, me-"moratis magistris, sociamus Auctores. U-"num igitur adjungi ceteris volumus qui "Philosophiæ arcana rimatur; *duos quoque qui*

[a] GOTHOFRED observes that a restriction of this sort might have been usefully adopted in most Academies in his time: for I myself, says he, know of certain law Professors "qui locis "nonnullis jurisprudentiam *cauponantes*, et Academias et Au-"ditoria desolavêre."

*Juris*

*Juris ac Legum Formulas pandant.*[t]" The third and laſt clauſe in this Law aſſigns to each Profeſſor an *Auditorium*, or ſeparate School in which he is to deliver his lectures, in order to prevent any interference between the different claſſes.[u]

Such was the original eſtabliſhment of this third Academy, ſet apart by Imperial Authority for the ſtudy of the Roman Law. And here it may not be amiſs to take ſome notice of the manner in which this ſtudy was uſually proſecuted.

The young men, during their firſt year, were confined to ſome book of general Principles, the Inſtitutes, for example; or were admitted, as it is ſaid, merely "ad limina legitimæ ſcientiæ," by going through the four firſt books of the Digeſts. While thus engaged, they were ſtiled *Dupondii*,) ſtudents of ſmall conſideration) till JUSTINIAN ſubſtituted *Juſtinianei novi*, as a more encouraging appellation. The next year was employed in

[t] Loc. cit.

[u] DU FRESNE ſuppoſes the *Capitolii Auditorium* at Conſtantinople to be the ſame with what was afterwards called the *Baſilica*, and quotes in proof of it an Epigram in the 4th book of the Anthologia, cap. 23. which has for its title—ΕΙΣ ΤΗΝ ΒΑΣΙΛΙΚΗΝ ΤΩΝ ΠΑΙΔΕΥΤΗΡΙΩΝ ΕΝ ΒΥΖΑΝΤΙΩ.

reading

reading though the ſecond and third Parts of the Digeſts, from the fifth to the twentieth book, which, conſiſting principally of Prætorian Law, occaſioned the Students to be called *Edictales*. In the third year they continued their progreſs through the fourth Part of the Digeſts from the twentieth to the twenty-eighth book; and for a very obvious reaſon were during that time called *Papinianiſtæ*, "Quo nomine," ſays HEINNECCIUS, "adeo ſibi placebant, ut diem "quo ejus doctrinâ primum fuerant initiati, "feſtum ſolennemque haberent." The remaining twenty two books occupied the fourth year of their ſtudies, and being then conſidered capable of *ſolving* any queſtion of Law, they acquired the name of *Lytæ*.

"Qui juris nodos, Legumque ænigmata ſolvunt."

Another year however was uſually added, in which they were admitted to read the Code, and whatever books of law they ſhould think neceſſary; and they then terminated their ſtudies with the title of *Prolytæ*. JUSTINIAN goes ſo far as to aſſert of thoſe who have properly employed their time during this five years courſe, "Nihil eis legitimæ Scientiæ "deerit, ſed omnem ab initio uſque ad finem ſuis

ſuis animis amplectantur.[w]" This ſyſtem of education appears to have been preſerved with very ſlight variation for many years, and was adopted upon the revival of the Science in moſt of the Academies in Europe.[x]

If by this deſultory ſketch of a very curious ſubject any of my readers ſhall be induced to conſider it more minutely, they will find at every ſtep ſome freſh ſource of valuable information opening upon them. Of this I am convinced, that there are very few points of more pleaſing inveſtigation, or which, properly treated, would be more intereſting in the annals of Literature, than a complete *Hiſtory of the Diſcipline and Studies of the Academies of the Ancients.*[y]

[w] The whole of this ſubject may be ſeen at large in the Conſtitution, *Omnem reipublicæ noſtræ ſanctionem*, prefixed to the Digeſts.

[x] This *Quinquennale ſtudium Juris* was not overlooked by the Compilers of the Statutes in our own Univerſities. "Quod-" que per Biennium in Academiâ, Dialecticæ, Morali Philo-" ſophiæ, et Politicæ, aliiſque Humanioribus Literis incum-" bat, priuſquam *Quinquennium* in ſtudio juris ponere incipiat." *Corpus Statutorum Univ. Oxon.* Tit. 6. §. 4. The CAMBRIDGE Statute requires of the Student only twelve months application to the Inſtitutes to prepare him for entering on his five years Courſe of Civil Law.

[y] EGASSE DU BOULAY, in his celebrated Hiſtory of the Univerſity of Paris, has proved to us how intereſting ſuch a work

## P. 47. [I]

THE ſecond and third centuries of the Chriſtian æra have been celebrated for forming the brighteſt period of Roman Juriſprudence. In the time of CICERO, it is true, the ſtudy of the Law appears to have been more generally cultivated, and the learned opinions of that age were perhaps, in point of wiſdom and equity, never excelled. It is obſervable, however, that while the moſt poliſhed language was adopted on every other ſubject, Juriſprudence alone retained much of its original ſtiffneſs and barbariſm. Towards the age of the ANTONINES a very conſiderable reformation took place in the ſtyle of the Law, and from this time the works of the civilians are characteriſed by a peculiar elegance and preciſion.[z]

work may be made. In his firſt volume he has treated *De Regimine et Studiis veterum Academiarum.*

[z] There is a good Diſſertation on the *Language of the Digeſts* by GASP. KIRCHMAIER, to which, he ſays, the two following verſes in TAUBMANN's Epigrams firſt gave riſe.

"*Credo ego ſi Linguæ Ciceronis imago periſſet*
"*E Juris poſſet corpore reſtitui.*"

It

It was this, no doubt, (notwithſtanding what ſome *Antitribonianiſts* have aſſerted) which particularly recommended them to the attention of TRIBONIAN and his aſſociates, and obtained them the preference over the writings of the older Juriſts. Theſe latter, form a very ſmall part of the Digeſts, whereas, there is ſcarcely a book in which the principal titles are not compiled from the Works either of PAPINIAN, PAULUS, ULPIAN, or ſome other lawyer of the ſecond and third centuries.[a]

Of ſome of theſe Civilians nothing remains but their names, and the titles of their works; and even of the moſt eminent among them the memorials are very ſcanty. To paſs over many of leſs note, whoſe hiſtory the curious reader may learn from what FABRICIUS has compiled in his *Bibliotheca Græca* and *Latina*,[b] I ſhall confine myſelf to a

[a] It has been generally ſuppoſed that the original works of the old Lawyers were deſtroyed by order of JUSTINIAN, as ſoon as his compilation was completed. See GRAVINA *De Ortu*, cap. 132. Jo. JAC. WISSENBACHIUS, *Emblemata Triboniani*, p. 9. LUD. VIVES, *De cauſis corruptarum Artium*, Lib. 7.

[b] Lib. 6. cap. 6. *Index Juriſconſultorum veterum Pandectis Florentinis præmiſſus*, with the two ſupplementary ſections: and again, *Bibliotheca Latina*, Lib. 4. cap. 9.

ſhort account of two or three of the moſt remarkable characters.

PAPINIAN was the confidential friend, and by marriage a relation of the Emperor SEPTIMIUS SEVERUS, who, as a teſtimony of his eſteem, created him Prætorian Præfect, and at his death left him guardian to his two Sons, GETA and CARACALLA.

Though the fact reſts ſolely upon the teſtimony of DION CASSIUS, yet as he was a contemporary writer, it has been thought ſufficient to eſtabliſh the opinion that PAPINIAN accompanied SEVERUS and his ſons to BRITTAIN, and preſided for ſometime in the tribunal at *York*. The paſſage from which this inference has been drawn is to this effect: " The Emperor and his ſons being " at York, CARACALLA, following cloſe " behind his father, is obſerved to draw his " ſword ſecretly, with a deſign as was ſup- " poſed to kill him, but is prevented by the " ſoldiers. SEVERUS ſummons him before " the preſence of the army, and with great " compoſure laying the weapon on the " ground, bids him, if he wiſhes for his " death, to kill him on the ſpot; but if " you dare not ſtrike with your own hand, " (adds he) here is your *Præfect* PAPINIAN, " give

"give but the word and (as you are his So-"vereign[c]) he muſt obey your order.[d]"

It was the cruel and implacable ſpirit of CARACALLA which afterwards proved the ſource of PAPINIAN's ruin: for, agreeably to the truſt repoſed in him, the Præfect thought it his duty, if poſſible, to reconcile the young Princes, who had long been at enmity, but his tendereſt remonſtances had no effect on the unfeeling heart of CARACALLA; on the contrary he conceived the moſt ungenerous ſuſpicions of PAPINIAN, and determined by the advice of his creature MACRINUS, to take an opportunity of getting rid of ſo troubleſome a monitor. This ſoon offered; for having put his brother GETA to death, he called upon PAPINIAN to juſtify the act in a public oration. Shocked at the propoſal, this illuſtrious man, with

[c] It muſt be obſerved that CARACALLA was left by his father, as *Sovereign* in Brittain a few months before.

[d] DION. Lib. 79. The fact is ſupported by CAMDEN and the learned SELDEN. The latter is of opinion that both ULPIAN and PAULUS were alſo in this iſland, and that the Roman Law prevailed here about 360 years; i. e. from CLAUDIUS A. D. 50. to the reign of HONORIUS, A. D. 410. when Rome was ſacked by ALARIC, *Diſſert. ad Fletam.* cap. 4. See alſo DR. DUCK. *De Uſu et Auctoritate*, &c. Lib. 2. cap. 8.

great warmth refused to attempt a palliation of so atrocious a crime, at the same time declaring "Non tam facile Parricidium excusari posse, quam fieri." Upon this the incensed tyrant ordered both the Præfect and his unoffending son to immediate execution.[e]

It has been supposed, upon the authority of two very doubtful inscriptions,[f] that PA-

[e] DIO. Lib. 77, 78. SPARTIAN. *in Caracalla.* GRAVINA considered the Catonian virtue of this Prince of Jurists (as he terms him,) a proper subject for the stage, and has composed a Tragedy called by his name, which turns on the circumstance of his death, as related above.

That GRAVINA's Dramatic Works are not very generally known is no loss perhaps to his reputation; for this elegant Critic and Civilian (to judge from the few specimens he has given us) seems by no means to have possessed the talents requisite for this species of composition.

[f] A Silver Urn is said to have been found at Rome about the middle of the 16th Century, with the following inscription.

ÆMILII PAPINIANI. J. C.
PRÆFECTI PRÆTORIO
REQUIESCUNT HIC OSSA
CUI
INFELIX PATER ET MATER
SACRUM FECERUNT
MORTUO
ANNO SUÆ ÆTATIS
TRICESIMO SEXTO.

There is also another inscription nearly to the same purpose, but the antiquity of both has been very much doubted.

PINIAN

PINIAN was only in his 36th year at the time of his death; but this cannot be thought very probable, if we consider the offices he bore and the high reputation he had enjoyed under the former emperor. CUJACIUS tells us, it was usual to refer the decisions of doubtful and intricate cases to this lawyer, whom he styles "*Asylum* juris et legalis doctrinæ.[g]" ST. JEROME (says GRAVINA) does not hesitate to mention PAPINIAN with ST. PAUL, "Eundemque locum PAPINIANO tribuit in "humano jure quem habet PAULUS in Divi-"no,[h]" and BALDUIN in the same high strain of Panegyric, thanks Divine Providence for having raised up for the preservation of justice and the general good of mankind, such characters as JOSEPH, DANIEL, PERICLES and PAPINIAN.[i] We have already had occasion to mention that it was usual in the Law Academies for the students to make great rejoicings upon obtaining the title of *Papinianistæ*; a circumstance much to the honour of this civilian, especially when we are told it was not considered as a mere youthful frolic, but as a festival instituted and sanctioned by im-

[g] *In Papinian. in princip.* p. 32.

[h] *De Ortu*, &c. cap. 99.

[i] *In Comment ad Instit. in Præfat.* p. 4.

perial

perial authority:[k] Nor will it ſeem ſurprizing that the firſt introduction to the reading of PAPINIAN was a cauſe of ſo much joy, if we recollect the terms in which he is always mentioned by the compilers of the Digeſts; and that the emperor himſelf confeſſes he is indebted to him for the moſt brilliant parts of his work.[l]

In the ſame age with PAPINIAN flouriſhed DOMITIUS ULPIAN, by birth a Syrian, the Tutor, Secretary and Friend of ALEXANDER SEVERUS, by whom he was alſo appointed Prætorian Præfect. Such was the deference which the Emperor paid to the opinions of this lawyer, that according to LAMPRIDIUS, the Roman world might be ſaid to have been governed for many years by his Councils. Many excellent laws were framed by his ſuggeſtion, particularly ſome which regulated and augmented the public revenue, nor can we heſitate to aſcribe to him that ſuperior dignity and wiſdom which characterize the

[k] CONSTITUT. *Omnem Reipub.* &c. §. 3.

[l] Loc. cit. §. 4. For further particulars of the Life and Writings of PAPINIAN, I refer the reader to a work of EVERARD OTTO on this ſubject. Lugd. Batav. 1718. And to an Oration of JAC. LECTIUS. There is alſo a Life of PAPINIAN, by WESENBECH.

Conſti-

Conſtitutions of SEVERUS. In ſhort the happy effects of his adminiſtration were ſo generally felt that, but for ſome few objectionable points, there would be no reaſon to regret the influence he held over the Emperor's conduct.[m] It is reported of CONSTANTINE THE GREAT, that he enquired of LAMPRIDIUS, how it happened that ALEXANDER being a foreigner and an unexperienced youth when he became poſſeſſed of the empire, conducted himſelf with ſo much prudence and moderation, whereas moſt of his predeceſſors had diſgraced the Purple by their cruelties and extortions. To this he is ſaid to have replied, "that the Roman world was indebted to the integrity and wiſdom of ULPIAN for this happy diſpoſition of its Prince.[n]" There is, no doubt, great truth in the Hiſtorian's anſwer, yet it muſt be obſerved that ULPIAN's conduct is not altogether unimpeached. We are told, it was by his advice that many of thoſe ſevere Edicts againſt the Chriſtians, which had long been dormant, were revived, and that he ſtill further excited the ſpirit of perſecution, by publiſhing a work

[m] LAMPRID. *in vit. Alex. Severi.* Lib. 24.

[n] ULPIANUM Præfectum Prætorio et *Parentem ſuum* appellat, Loc. cit.

on

on the Duty of a Proconſul, in which all thoſe bloody Edicts were collected together. From this latter charge many able writers have laboured to exculpate him, and not without ſucceſs.[o] The former ſeems never to have been diſputed. We may conjecture that the Emperor himſelf, both from the principles in which he had been educated, and from a known reſpect which he had for his mother, muſt have been naturally well diſpoſed towards the Chriſtians. There are indeed ſome who aſſert that he actually embraced the true faith on his expedition againſt the Perſians: But whatever may have been his religious ſentiments in the former part of his reign, it is clear from his conduct afterwards, that the arguments of his favourite Counſellor had greater weight with him than either the example of MAMMÆA, or the reaſonings of the KING of EDESSA, who is ſaid to have been the author of his Converſion.[p] The death of ULPIAN,

[o] GUL. GROTIUS. *De Vitis Juriſconſultorum.* Lib. 2. cap. 10. The accuſation is ſaid to reſt ſolely on a paſſage in LACTANTIUS, who ſpeaks of one DOMITIUS as the Author of ſuch a work in *ſeven* books, but ULPIAN's is known to have been written in *ten.*

[p] LAMPRID. Loc. cit.

like

like that of Papinian, was violent and premature. He fell a ſacrifice to the jealouſy of the Prætorian Camp, A. D. 228. With reſpect to his literary character, it is ſummed up in the following manner by Gravina: "His ſtyle is ſmooth and pleaſing, yet at the "ſame time not without ſufficient ſtrength "and dignity. His faculty of diſcrimination "and definition is very great, and in his "choice of words he is really wonderful; "indeed he was ſo extremely ſcrupulous in "his phraſeology, that he acquired the ap-"pellation of *Collector of ſubtleties*—Collec-"tor Spinarum." Yet with all his learning and political wiſdom, if we take the whole of his conduct in one view, it will be difficult to decide whether from his improvement of Human Law, or his oppoſition to Divine, he ſhould be conſidered as a friend or an enemy to his countrymen.[q]

q *De Ortu*, &c. cap. 100. There is an Oration by Jac. Lectius upon the Life and Writings of Ulpian. His *Fragments*, in 19 titles, are publiſhed in the *Corpus Juris Civilis*.

It muſt be obſerved that, notwithſtanding Ulpian's accuracy in his choice of words, he was not always very exact in his definitions: that of the *Law of Nature* in particular, Dig. Lib. 1. tit. 1. §. 3, is very objectionable. It has been much commented upon, but never perhaps in a more agreeable or ſcholarlike manner than by Dr. J. Taylor in his *Elements of Civil Law*, p. 111, &c.

JULIUS PAULUS, a native of Padua, was contemporary with PAPINIAN and ULPIAN, and ſeems to have riſen by nearly the ſame ſteps to equal honours: for having acted as an Aſſeſſor with them, he was afterwards created principal Secretary, and in the end Prætorian Præfect, to ALEXANDER SEVERUS. Notwithſtanding the near equality of their years, LAMPRIDIUS informs us, that the two laſt mentioned lawyers were ſcholars of PAPINIAN. A fact which, though diſputed by many, GRAVINA thinks very probable; "for it is certain (ſays he) that while "they were his fellow ſtudents, they always "paid the ſame deference to his opinions "and councils, as ſcholars do to thoſe of "their Maſter; et ſi non *ætate* ejus diſcipu-"los *voluntate* tamen fuerunt et *cultu*.[r] As a writer, PAULUS is thought to excel ULPIAN, and even PAPINIAN himſelf, in dignity of ſtyle, as he certainly did in the univerſality of his genius; for there was ſcarcely a point of Law upon which he had not treated. There is one circumſtance wherein he differed very materially from his contemporaries. It was a prevailing faſhion among the Juriſts of that age to allow themſelves great latitude

[r] GRAVINA, ut ſupra, cap. 98.

in

in their interpretations and opinions, without much regard to Precedents; PAULUS, on the contrary, was remarkable for his rigid conformity to the ſtrict letter of the law.[s]

Under this celebrated Triumvirate, the Roman Law arrived at its higheſt perfection, both as a Profeſſion and a Science, and from this period it appears, with few exceptions, to have been in a gradual decline till the age of JUSTINIAN. It is with great juſtice, therefore, that GRAVINA calls the works of MODESTINUS (a pupil of ULPIAN) the expiring accents of Juridical wiſdom. HERMOGENES, and many others, who flouriſhed in the ſucceeding age, did not attempt to extend the boundaries of the Science, but contented themſelves with traverſing the paths already explored; and in this they would certainly have been commendable, if, inſtead of perplexing (as they often did) the obvious ſenſe of the Laws by ſophiſtical reaſonings, they had employed their talents in illuſtrations and arrangements of ſuch parts of Juriſprudence as even then muſt have become obſcure and inconſiſtent. We may further ob-

[s] GRAV. ut ſupra.

ſerve of thoſe times, that the venerable privilege of eſtabliſhing precedents upon the opinions of the learned was entirely obſolete. Inſtead of accuſtoming themſelves, as was formerly the caſe, to deliver their own ſentiments upon diſputed queſtions, the moſt eminent Civilians of the fifth century were content to retail the deciſions of preceding Juriſts, and from being regarded as *Oracles*, became in the end mere *Teachers* of Law.[t]

[t] The Catalogue of POMPONIUS contains an account of all the great Lawyers from the foundation of the City, but more eſpecially from TIB. CORUNCANUS, A. U. C. 500, to SALVIUS JULIAN, A. D. 136. For a very ſatisfactory account not only of theſe, but of all ſuch as lived before the 6th century, together with their works, conſult SCHULTINGII *Juriſprudentia vetus ante-Juſtinianea.* And GUL. GROTIUS, *De vitis Juriſconſultorum.*

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## P. 48. [K]

THE ſtate of the Roman Civil Law during the 5th and 6th centuries in thoſe parts of the Empire which were then invaded and ſettled by the barbarians of the north, has been

been very variouſly deſcribed. According to ſome writers its authority was acknowledged and appealed to, upon all material occaſions, through the whole of that period; it was incorporated with, and in many inſtances ſuperſeded, the cuſtoms and inſtitutions of the invaders, and may at this day be traced in all thoſe Gothic compilations which finally aroſe upon its ruins. Others again are of opinion that for a time the Roman Law was totally extinguiſhed in the Weſt; that under ſome few of the Gothic Kings indeed it enjoyed a feeble exiſtence, but cannot properly be ſaid to have revived after the death of THEODOSIUS; nor do they think that much ſtreſs ſhould be laid upon any arguments drawn from the great reſemblance of many parts of the Roman and Gothic Codes; becauſe this is principally diſcernible in paſſages which contain ſuch obvious maxims of policy as muſt naturally occur to a prudent Legiſlator of any age or country. The truth perhaps may be diſcovered between theſe oppoſite opinions.

There can be no doubt that the admirable œconomy of the Roman Law muſt have been peculiarly ſtriking to the barbarian conquerors.

querors. A people accuſtomed to an unſettled mode of life, inhabiting countries remote from each other, and who were for the firſt time collected together in one vaſt body in a foreign land, cannot be ſuppoſed to have poſſeſſed materials of their own, ſufficiently extenſive to form the baſis of any regular political eſtabliſhment; or if they had, it is not probable they would eaſily have agreed among themſelves upon proper meaſures for arranging them. It was therefore very natural for them to adopt, upon frequent emergencies, the laws and inſtitutions which they found eſtabliſhed in the conquered country; yet not ſo entirely to the excluſion of their own peculiar cuſtoms, but that upon a variety of occaſions they would prevail over every other conſideration. The following facts may ſerve to throw ſome further light upon this ſubject.

The time which elapſed between ALARIC's Invaſion and his death [u] was too much occupied in ſchemes of future conqueſt to leave that Leader ſufficient leiſure for executing any evil deſigns againſt the Roman Laws. That their authority ſhould be ſuſ-

[u] From A. D. 408 to 412.

pended

pended during that period was the leaſt miſchief that could befall them: It was indeed a natural effect of that general confuſion which prevailed: but this was the only evil; for it does not appear that they fell under any formal proſcription, or were ſupplanted by any other laws. The danger which threatened them upon the ſucceſſion of ATAULPHUS was much more alarming. The total extirmination of the Roman Government, and the foundation of the Gothic Empire upon its ruins, were projects which this Prince, by his own confeſſion, had formed in the early part of his reign. Fortunately however, by the interceſſion of his wife PLACIDIA, the ſtorm was diverted, and ATAULPHUS not only abandoned his ſcheme, but (as a proof of the ſincerity of his converſion) publiſhed an Edict at Narbonne, in which he re-eſtabliſhed the impaired authority of the Roman Laws, and bound his ſubjects to an exact obſervance of them.[w] The tranquillity which enſued upon the evacuation of Italy by the Goths,[x] and the meaſures adopted to

[w] OROSIUS. Lib. 7. cap. 43. MELCHIOR GOLDASTI *Conſtitutiones Imperiales*, tom. 3. p. 586.

[x] A. D. 412.

repair

repair the ill effects of their administration, revived for a time something like the ancient spirit of the Constitution. How much the seasonable attention of THEODOSIUS and VALENTINIAN contributed to this, is too well known to be insisted upon in this place.[y] Let us therefore turn our attention to another point. In the southern Provinces of Gaul, during the last years of HONORIUS,[z] the Visigoths had confirmed their settlements, yet, from their intimate alliance with the court of ROME, and from a veneration for the laws, they still submitted to the government of the Emperor's Præfects and Proconsuls, and were besides about this time governed by THEODORIC the younger,[a] a prince who, in consequence of a very liberal education, and the example of his amiable tutor, had conceived an uncommon attachment to the Roman Law, the study and practice of which was generously encouraged during his reign. SIDONIUS APOLLINARIS enters into a very minute detail of THEODORIC's per-

[y] See CHRONOLOGICAL VIEW, p. 43, &c.
COD. THEODOS. Lib. 11. tit. 28. l. 7.——Lib. 13. tit. 11. l. 12.—Lib. 15. tit. 14. l. 14.

[z] A. D. 420.

[a] A. D. 453.

son,

ſon, character and mode of life and ſpeaking of his court, ſays, "Videas ibi elegantiam "græcam, abundantiam gallicam, celeritatem "italam, publicam pompam, privatam dili-"gentiam, regiam Diſciplinam.[b] He informs us alſo that he attempted to model the whole ſyſtem of Polity after the faſhion of Imperial Rome even in the minuteſt particulars, that he revived the original names of ſeveral of the Magiſtracies and re-eſtabliſhed many of the ancient tribunals. In another work the ſame writer introduces him as addreſſing his Tutor AVITUS in the following lines.

"Mihi Romula dudum
Per te Jura placent, parvumque ediſcere juſſit
Ad tua verba Pater, docili quo priſca Maronis
Carmine molliret Scythicos mihi Pagina mores.[c]"

And in conformity with theſe humane ſentiments, it appears in the courſe of this Poem, that THEODORIC through his whole life, diſcovered not only a reverence for the Laws and Manners of Rome, but a taſte alſo for the works of her beſt writers and an eager

[b] Lib. 1. Epiſt. 2.

[c] Panegyric. ad AVITUM. carm. 7.

attachment to every elegant and liberal purſuit.[d]

Upon the death of THEODORIC the Goths, who, having no written Code of their national laws, had hitherto been governed either by traditional cuſtoms or (ſince their eſtabliſhment in the provinces of Narbonne and Aquitaine) by the Roman Law, received in his ſucceſſor EURIC a legiſlator of their own. "Sub hoc rege Gothi legum inſtituta *ſcriptis* "habere cœperunt; nam antea, tantum *mo-* "*ribus* et *conſuetudine* tenebantur.[e]" The firſt care of this Prince was to gain over to his intereſt the principal officers in the provinces, who were to oppreſs and impede by violence and fraud the execution of the Roman Laws, and to bring the eſtabliſhed tribunals into contempt by ſetting over them corrupt judges. SERONATUS, Præfect of Gaul, a man of conſiderable influence, became entirely devoted to his intereſt. His

[d] From a great ſimilarity in their characters this Prince is frequently confounded with THEODORIC the OSTROGOTH, who afterwards reigned in Italy; and in conſequence of this error, the Epiſtle I have quoted from SIDONIUS is to be found in ſome editions of CASSIODORUS.

[e] ISIDORI *Chronicon Gothorum.* p. 13. SIDONIUS. Lib. 8. Ep. 3 9.

trea-

treacherous artifices are ſtrongly repreſented by SIDONIUS, who emphatically calls him the *Cataline* of his age, and deſcribes the pernicious effects of his conduct in the following words, "Exultans Gothis, inſultans Ro-"manis, illudens præfectis, colludenſque "numerariis, Leges Theodoſianas calcans, "*Theodoricianaſque* proponens, veteres culpas, "nova tributa perquirit,[f]" by the aſſiſtance of this man, EURIC was enabled to aboliſh the authority of the Roman Laws in favour of his new Code, and by this ſtep to become the *Founder* of *Gothic Juriſprudence*. It has been much diſputed what we are to underſtand by the *Theodorician* Laws in this paſſage of SIDONIUS. We cannot ſuppoſe that it refers, as ſome have conjectured, to any Code of his two predeceſſors, the latter of whom in particular we know to have been remarkably attached to the Roman Laws. The moſt probable opinion ſeems to be that EU-

[f] Lib. 2. Epiſt. 1. In another place he ſays of EURIC, "Modo per promotæ limitem ſortis, ut populos ſub armis, ſic "frænat arma ſub legibus." Lib. 8. Ep. 3. See alſo Lib. 7. Ep. 1—6. and Lib. 8. Ep. 9. where, in a Poem which he ſends to his friend LAMPRIDIUS, he very figuratively deſcribes the extenſive power of this Gothic king, and tells us, that during his reign, the Garonne gave laws to the Tiber.

RIC's proper name was THEODORIC, but was changed in consequence of his legislative skill to EURIC or EVARIC, agreeable, (says GROTIUS) to an obvious derivation from *Evva* a law, and *rich* abundant; and this seems to receive confirmation from ISIDORE, who calls him both *Euridicus* and *Theudiricus*,[g] and from SIDONIUS in his poem to Lampridius.[h]

ALARIC the second succeeded to the Gothic throne with very different sentiments from his father. Influenced probably by his connection with THEODORIC THE OSTROGOTH, then reigning in Italy, whose Daughter he had married, this Prince with the assistance of the most learned men of his nation, published a complete revision of the *Theodosian Code*, together with the *Novel Constitutions*, the *Opinions* of PAULUS and CAIUS's *Institutes*.[i]

[g] Loc. cit. Lib. 8. Ep. 9.

[h] CIRONII. *Observ. Jur. canonic.* Lib. 5. cap. 2. GOTHOF. *in prolegom. Cod. Theodos.* cap. 3—5.

[i] ALARIC's Code is prefaced in the following words. "ANIANUS vir spectabilis, ex præcepto. D. N. Gloriosissimi "ALARICI Regis, hunc Codicem de Theodosianis Legibus "atque Sententiis Juris, vel diversis Libris electum, Aduris "(*Aire* in *Gascony*) Anno XXII regnante, edidit atque subscrip-"sit."

Dr. Taylor is of opinion, that by reason of many interpolations which were admitted, into this Code, it never was esteemed of much authority.[k] But Cironius assures us, it was by this compilation solely that those Provinces were constantly regulated, as long as the Roman Law prevailed among them and that it is the same, which on the revival of Jurisprudence, was adopted by Azo and Accursius in the Schools of Montpelier and Toulouse.[l] A short time after the publication of this Code a great Revolution took place in the southern Provinces of Gaul. The deposition and death of Alaric was succeeded by the *Retreat of the Visigoths into Spain and the Establishment of the French Monarchy*.[m] Together with the new possessors, new customs and institutions were necessarily introduced; yet the Roman Law still main-

"sit." This Anianus was Chancellor at the Court of Alaric and composed some commentaries on the works of Paulus, which were inserted in this Compilation.

k *Elements of Civil Law*, p. 12.

l Cironius. Loc. cit.

m The Franks under Clovis took possession of the provinces of Narbonne and Aquitaine, A. D. 508. But the final establishment of the French Monarchy cannot properly be fixed till the year 536.

tained

tained its ground; for we read that notwithstanding the publication of the RIPUARIAN and SALIC CODES,[n] the Roman subjects were indulged in the free use of the Theodosian Laws, especially in cases of Marriage, inheritance and other important transactions of private life; points on which even the barbarians themselves are known to have made frequent references to them. "Inter Romanos negotia Causarum Romanis "Legibus præcipimus terminari" and "Salvâ constitutione Legis Romanæ in eis qui "secundum illam vivunt," are indulgencies, which constantly occur in the Gothic Codes,[o] and CIRONIUS, (whose profound researches into the political antiquities of France entitle him to particular attention on this subject) goes so far as to assert that, at the period we are speaking of, "The Franks and Gauls in general made use of the Gothic and Roman Laws indifferently, yet with a decided preference in all important business to

[n] The SALIC LAW was compiled very early in the 5th century, and was confirmed by Pharamond about the year 424. The CUSTOMS of the RIPUARIAN's were collected into a body rather later, and it was not till the end of the 8th century that they were completed and published by Royal Authority. LINDENBROG, *Prolegomena Legum Antiquarum.* p. 4. &c.

[o] *Lex Burgundionum*, tit. 55. L. 2. *Leges Salicæ*, tit. 32.

the

the latter.[p]" In the Capitularies of CHARLEMAGNE we discover the same reverence for these laws. "We ordain, says he, this "for the observance of such as acknowledge "our national law. De aliis autem qui "secundum Legem Romanam vivunt, nihil "aliud nisi quod in eisdem legibus continetur "definimus.[q]"

During the first years of the Visigothic settlements in Spain, it is difficult to determine what was the real state of the Roman Laws in that country; for though many edicts are to be found, expressly prohibiting the use and introduction of any foreign laws or customs whatever, yet by a strange inconsistency, the compilations of that time abound with them, particularly with extracts from the Theodosian Code.[r] In the reign of LEOVIGILD, A. D. 608. the Theodorician Laws already mentioned, being first carefully revised and augmented, were published under the new title of the VISIGOTHIC CODE, a Compilation which is considered as the *Source of Spanish Jurisprudence.* It is divided into XII Books, and is thought

[p] CIRON. Loc. cit.

[q] Lib. 4. cap. 47. and again Lib. 5. cap. 13. 23.

[r] LINDENBROG. Loc. cit.

to

to have been framed after the model of Juſtinian's work; it contains a great mixture of Roman and Gothic inſtitutions, and (what is not very uſual in the writings of that age) is drawn up in very pure latinity.[s] "Even in theſe days (ſays CUJACIUS) we often have recourſe to the *Viſiogothic Code*, which is evidently compiled in imitation of JUSTINIAN's. And this we do, not only becauſe it contains ſo much of the ſpirit and matter of the Roman Civil Law, but becauſe, unlike the ſtupid compilations of other people which cannot be read without diſguſt, it is written in a ſtyle and manner which, inclines me to believe that theſe provinces had arrived at a pitch of refinement much beyond their neighbours.[t]" From this peculiar excellence, its authority extended beyond the limits of Spain, was admitted by the Burgundians and Saxons, and may be traced in the Capitularies of CHARLEMAGNE and of many of his ſucceſſors. We are even told that the Saracens acknowledged the equity and wiſdom of the Viſigothic Laws, and in many caſes adopted them.[u] The Spaniſh kings alſo, ac-

[s] CIRONIUS ut ſupra. cap. 7.

[t] *De Feudis.* Lib, 2. tit. 11.

[u] DUCK. *De Uſu et Auctoritate Jur. civ.* &c. Lib. 2. cap. 6. ſect. 15.

cording

cording to GROTIUS, when they recovered any of their provinces out of the hands of the Moors, conſtantly bound the inhabitants to an obſervance of them; "Harum enim Legum "Corpus et olim, et nunc dicitur fons verus "Hiſpanici juris." [w] A Code of Laws ſo ſucceſsfully compiled and propagated, muſt have given a fatal blow to the Roman Civil Law, which, till this event took place, had met with no oppoſition or diſcouragement. We now begin to meet with many prohibitory edicts conceived in the following manner: "There are many foreign laws "and inſtitutions crept in among us, which, "though they pleaſe by reaſon of the eloquent ſtyle in which they are written, are "nevertheleſs full of inconſiſtencies. Therefore conſidering the preſent Code which "we have promulged to be fully ſufficient "to anſwer every purpoſe of Legiſlation "among us, we prohibit all our ſubjects "henceforth having recourſe to the Roman "Laws, or to perplex the forms of Juſtice

[w] GROTIUS, *In prolegom. Hiſt. Goth.* p. 4. The Viſigothic Code may be conſulted in LINDENBROG's Collection of Ancient Laws.

"by appeals to any foreign Code what-
"ever."[x]

National prejudice, as may reaſonably be ſuppoſed, in proceſs of time co-operated with theſe ſevere prohibitions in ſuppreſſing the Roman Law; for it is certain that from this period no proof can be produced of their exiſtence in thoſe provinces till towards the latter end of the 13th century, when ALPHONSO X. is ſaid to have been ſo ſtruck with their excellence that he ordered them to be tranſlated into the Spaniſh tongue, and afterwards by a favourable Edict reſtored their authority.[y]

From the whole of what has been advanced, the following concluſions may, I think, be drawn with a tolerable degree of certainty. That during the 5th century, and prior to the exiſtence of any written Code among the Barbarians, the ROMAN LAWS were generally admitted and conſidered by them as of very high authority: That they differed from the national Inſtitutions which the Invaders brought with them into their new

[x] *Leg. Viſig.* Lib. 2. tit. 1—5—7—9, and again to the ſame purpoſe, tit. 9—10—13.

[y] COVARRUVIAS. *Variarum Reſolutionum*, Lib. 1. cap. 14.

ſettlements,

ſettlements, in having an *abſolute* and *univerſal* influence, whereas the GOTHIC LAWS were merely conditional, and confined to ſome particular diſtricts: That in conſequence of thoſe revolutions which happened in the ſixth century, particularly the introduction of the SALIC, RIPUARIAN, and VISIGOTHIC Codes, the Laws of THEODOSIUS loſt much of their authority, though the uſe of them was ſtill permitted to the ſubjects of the empire dwelling in the Provinces; and even the Goths themſelves would frequently appeal to them, in preference to all other foreign laws, on points where their own were ſilent or indeciſive:[z] And that, notwithſtanding the ſtrong prohibitions under which they latterly appear to have laboured, it can ſcarcely be aſſerted that they were ever thoroughly extinguiſhed; ſince the Gothic Legiſlators, aware of their extraordinary excellence, transferred ſo large a portion of them into their own compilations, that they effectually preſerved the ſpi-

[z] They were regarded (ſays Dr. DUCK) as *Ratio Scripta*, and their authority may be ſuppoſed analagous to that of the *Rhodian Laws* with the Romans, who, having no maritime Code of their own, appealed to this in all Caſes of neceſſity.

rit of the Roman Law, though they debased its form, and nominally denied its authority.[a]

This slight sketch is sufficient for our present purpose. A more particular investigation of the subject will enter with greater propriety into the SECOND PART of this Work.

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## P. 52. [L]

THEODORIC inherited from his father THEODIMER the extensive countries which lie between the Adriatic and the Danube, and are comprehended under the general name of *Illyricum*. While yet a child he was delivered into the hands of LEO, then

[a] The Lombards had settled in Italy almost eighty years before they formed any Code of their own. "ROTHARIS "Rex Longobardorum leges, quas solâ memoriâ et usu reti- "nebant, scriptorum serie composuit; Codicemque ipsum "*Edictum* appellari præcepit." PAUL WARNEFRID. *De Gestis Longobard.* lib. 4. cap. 44. GIANNONE speaks of a beautiful MS. of this Edict in Lombard characters, in the Archives of the Benedictine Monastery Della Cava, near Naples. *Ist. civ. di Napoli*, lib. 4. cap. 6.

Emperor

Emperor of the Eaſt, as a pledge of amity between the two nations, and received the firſt rudiments of his education in the Schools of Conſtantinople.[b] At the age of eighteen he was permitted to return to his native country, and upon the death of his father, A. D. 472, ſucceeded to his kingdom. The Emperor ZENO, Leo's ſucceſſor, conſcious of the abilities and ambition of Theodoric, and willing to ſecure the friendſhip of ſo powerful a neighbour, induced him by preſſing invitations once more to viſit the Conſtantinopolitan Court. Immediately upon his arrival he was loaded with honours, and appointed to poſts of the higheſt dignity in the empire. "Inter proceres ſui palatii illum collocavit, "in arma ſibi, eum filium adoptavit, de "ſuiſque ſtipendiis triumphum in Urbe do- "navit, factuſque eſt Conſul ordinarius—Et "etiam equeſtrem ſtatuam ad famam tanti "viri ante regiam palatii locavit.[c]" Diſſatisfied however with an inactive life, and anxious to ſignalize himſelf and his country by ſome ſplendid atchievment, he conceived the noble idea of delivering Italy from the hands

[b] "Educavit te in gremio civilitatis GRÆCIA, præſaga "venturi." ENNODII, *Oratio paneygr. ad* THEODORICUM.

[c] JORNANDES, *De rebus Geticis*, cap. 57.

hands of the barbarians, and of reviving in the Weſt the original ſpirit of the Roman Conſtitution.[d] "Why (ſaid he, addreſſing "himſelf to the Emperor) do you patiently "ſuffer that fertile region, which your pre-"deceſſors for a long ſeries of years ſo glo-"riouſly governed, to be continually paſſing "from one rude people to another? Permit "me and my Countrymen at our own ex-"penſe to have the glory of attempting its "deliverance, and ſhould we be ſo fortunate "as to diſpoſſeſs the barbarians, we will be "content to receive it from your hands as "the reward of our ſervice.[e]" The hiſtorian informs us, that having obtained permiſſion of the Emperor, he immediately ſet forward upon the expedition; and entering Italy by the Venetian Territory, carried his arms without any material oppoſition, to the walls of Ravenna. After a long and obſtinate ſiege, he at laſt poſſeſt himſelf of this place, where, having put ODOACER to death, he was, A. D. 490, proclaimed KING of the

[d] On this occaſion GROTIUS very happily applies to THEODORIC, Claudian's verſe,

"Vindicet *Arctous* violatas *Advena* gentes."

[e] JORNANDES, Loc. cit.

GOTHS

GOTHS and ROMANS. If we may judge from the complection of affairs at that time, it was to the ſeaſonable interpoſition of Theodoric that the Laws and Polity of Rome were indebted for their preſervation. A very eminent Italian Hiſtorian declares, that were he called upon to point out the period at which his country laboured under the greateſt wretchedneſs, it ſhould be that which paſſed between the death of the third VALENTINIAN, and the acceſſion of this Gothic King.[f] "The Provinces (ſays he) were "perpetually harraſſed by the incurſions "of barbarous tribes rapidly diſpoſſeſſing "each other, all was diſorder and confuſion; "the Laws were debaſed, and juſtice trod-"den down.[g]"

The ſurpriſing reformation brought about by THEODORIC in every department of the State, and his admirable regulations in the Provinces, as they are correctly ſtated by his Miniſter CASSIODORUS, repreſent him to us in every point of view as a moſt amiable and illuſtrious prince, and juſtify the BISHOP of PAVIA in his warmeſt effuſions of Panegyric.

[f] From A. D. 455, to A. D. 490.

[g] GIANNONE *Iſtoria di Napoli*, Lib. 3. cap. 2.

ric[h]. Procopius, who was a Greek, and consequently not naturally well affected to these strangers, seems notwithstanding to have been sensible of this, and forcibly recommends the Gothic Prince as a pattern of imitation to his countrymen.[i]

To form a judgment of him from his Epistles and Edicts, his whole attention seems to have been occupied in promoting the prosperity and happiness of his people, in correcting abuses, in redressing injuries, in relieving the distressed, and in contriving various plans of reformation.[k] What can be be more laudable than the manner in which he constantly shews his zeal for the encouragement of legislation, and the re-establishment of the Roman Laws! "Quid enim "proficit (says he) barbaros removisse con-"fusos, nisi vivatur ex legibus?" and again, "Jura veterum, ad nostram cupimus reve-"rentiam custodiri, delectamur enim Jure

[h] See Ennodius, Loc. cit. "Planeque si quis cultissimi, "clementissimique imperii formam conspicere voluerit, ei ego "legendas censeam *Regum Ostrogothorum Epistolas*, quas Cas-"siodorus collectas edidit." Grotius, *In prolegomena ad Hist. Goth.*

[i] Hist. Gothor. Lib. 1.

[k] Cassiodorus, passim.

"Romano

"vivere.[l]" Indeed we may obſerve that upon every occaſion of interference the excellent diſpoſition of this Prince breaks out in ſentiments full of benignity and true greatneſs, and that in all his regulations he manifeſts a real concern for the intereſts of religious, moral, and civil virtue.[m] It would be endleſs to dwell upon this part of THEODORIC's character, which has been ſo fully drawn by moſt of the hiſtorians of this period. There is one point of it not ſo generally known.[n]

Though according to a cuſtom of the Emperors ſince the reign of HONORIUS, his reſi-

[l] Ut ſupra, Lib. 3. Epiſt. 43.

[m] See CASSIOD. Lib. 4. Epiſt. 17. On the reſtitution of Poſſeſſions to the Churches of Narbonne. Lib. 3. Ep 44. To relieve the oppreſſed Profeſſors at Arles; to whom he promiſes a regular proviſion, aſſuring them "Non minus eſt quod *noſtris* "*verbis* quam quod *horreis* continetur." And he prefaces his Epiſtle to redreſs an injured individual with this noble ſenti-"ment: "Propoſitum Regale eſt, preſſis labe fortunæ, pie-"tatis remedio ſubvenire, et acerbos caſus injuriæ, meliore "ſorte mutare." Lib. 4. Ep, 41.

[n] The celebrated BOETHIUS was a leading man at the Court of THEODORIC. There is a curious Epiſtle written to him by the king, in which he deſires him to conſtruct a water-clock and ſun-dial for a preſent to a neighbouring Prince. CASSIOD. Lib. 1. Epiſt. 45.

dence was at *Ravenna*, yet he did not, like moſt of his predeceſſors, withdraw his attention from the ancient ſeat of empire. The ruinous temples and deſerted palaces of Rome preſented a ſcene of ſolemn magnificence not likely to eſcape the notice of ſuch a Prince as THEODORIC. It was in fact his favourite maxim, "Si eſſet humanis "rebus ulla conſideratio Romanam Pulchri-"tudinem non vigiliæ, ſed ſola deberet *Reve-"rentia* cuſtodire," and various are the edicts which were promulged in conſequence of this diſpoſition to encourage the carrying on works of public utility in that city.[o] At one time we find him ſetting apart a portion of his annual revenue for repairing and beautifying the public edifices, the bridges and aqueducts.[p] At another, giving orders for rebuilding the private houſes of ſuch of the inhabitants as may expreſs a deſire of returning to Rome. "Do not (ſays he) the beaſts of the field and every kind of animal feel a natural attachment to their ancient habitations, and return to them after abſence with double ſatisfaction? Quid jam de Româ de-

[o] CASSIODOR. Lib. 1. Ep. 25. Lib. 2. Ep. 7.—27. Lib. 4. Ep. 30—31—51. Lib. 5. Ep. 9.

[p] Lib. 2. Ep. 34.

bemus

bemus dicere, quàm fas est ab ipsis liberis plus amari?[q]" But THEODORIC did not content himself with merely publishing general orders for rebuilding and repairing; he appears to have extended his care still further. It had been a frequent custom before his time to destroy or deface the public edifices for the sake of the materials: This he very strictly forbids in the following words. "Ea "custodiri volumus maxime quæ urbis faciem videntur ornare. Quis enim dubitet "fabricarum miracula hac provisione servata? "Ut antiqui principes nobis meritò debeant "suas laudes, quorum fabricis dedimus longissimam juventutem, ut pristinâ novitate "reluceant quæ jam fuerant vetustosâ senec-"tute fuscata? Siquid igitur deficiente senio "fuerit demolitum, pervigili celeritate repa-"retur.[r]" But of all the Edicts of Theodoric there is none perhaps which affords a more lively idea of his humanity than that which he published, to alleviate the miseries to

[q] Lib. 1. Ep. 21.

In his liberality to ROME he did not forget RAVENNA. See Lib. 1. Ep. 6.—Lib. 2. Ep. 9, 10. 19.—Lib. 5. Ep. 38. but more especially Lib. 5. Ep. 16. and the four following, which contain orders for repairing the walls and arsenals, and a variety of other naval regulations in that port.

[r] Loc. cit.

which the inhabitants of *Naples* and *Nola* were exposed in consequence of a sudden eruption of Vesuvius. It is drawn up with great spirit by the pen of CASSIODORUS, and seems every way calculated to inspire those tender sentiments which so melancholy an occasion required.[s]

These instances are sufficient to shew how uniformly attentive this Prince was to the welfare of his people, not only in matters of public concern, but on all private occasions also, and that his power was seldom exerted but for the relief or prevention of physical and political evil. It was the constant object of his Epistles and Edicts, in the conception of which it is difficult to determine whether his wisdom or his virtue are most conspicuous. With great justice therefore we may apply to this part of the Emperor's character the compliment which PLINY paid to TRA-

[s] Lib. 4. cap. 50. The style of CASSIODORUS has been justly censured for being too quaint and declamatory. The poetical painting in this Epistle is certainly too strong; though perhaps the generous principle which occasioned it may in this instance prove a sufficient apology.

This writer is mentioned "as the first who ever digested a series of royal Charts and Instruments." WARTON'S *Hist. of English Poetry*. Vol. 1. Differt. 2.

JAN, "Magnificus in publicum, id maxime "providit, ut ſiſteret ruinas, ſolitudinem "pelleret, atque ingentia opera eodem quo "extructa erant animo, ab interitu vindica- "ret; quare non erga homines modo, ſed "erga tecta ipſa ſummopere promeruit.[t]" Upon his death bed, THEODORIC appointed his grandſon ATHALARIC, then about ten years old, for his ſucceſſor; leaving the Regency and the care of his education to his mother AMALASUNTHA; a Princeſs, as appears, eminently qualified for ſuch important charges. His laſt hours were employed in a review of his conduct during a fortunate reign of almoſt forty years, and in recommending his ſucceſſors to adopt the ſame ſyſtem which he had ſo uniformly adhered to; concluding (ſays JORNANDES) with the following injunctions; "Ut Regem colerent, "Senatum, Populumque Romanum amarent,

[t] PLIN. *Trajan. Panegyr.* *The Decline and Fall of the* CITY *of Rome*, to which MR. GIBBON tells us his plan was originally confined, is a copious and awful ſubject, and ſeems peculiarly calculated for the claſſical pen of this ſplendid hiſtorian; the accompliſhment of his promiſe therefore every friend of ancient learning and virtù muſt anxiouſly expect. See his *Hiſtory of the Decline and Fall of the Roman Empire.* Vol. 3. chap. 36. note 43.

"Prin-

"Principemque Orientalem placatum semper, propitiumque haberent.[u]" For some few years after his death this advice was most rigorously followed by the Regent, and strongly inculcated into her Pupil, of whom the Italian Provinces began to form the most favourable expectations.[w] But the happy interval of tranquillity was at an end, for upon the death of ATHALARIC, A. D. 534. the tempest which during the mild administration of his grandfather was thought to have been finally dispersed, returned with redoubled violence over Italy, and in its fury, not only swept away the venerable remains of art and civil wisdom, but in a great measure extinguished the original Language and and Manners of the inhabitants.[x]

[u] *De reb. Get.* cap. 59. It was in the very year of THEODORIC's death, that JUSTINIAN, having triumphed over the Vandals in Africa, sent Belisarius against the Goths in Italy.

[w] CASSIOD. Lib. 8. Ep. 1, 2, 3, 4. This and the following book consists entirely of ATHALARIC's Epistles and Edicts, in all of which he professes a sincere disposition to pursue the plan laid down by his Grandfather, together with a strong desire to preserve the friendship of the Constantinopolitan Court and to promote a lasting union between the Goths and Romans.

[x] The LOMBARDS invaded Italy and laid the foundation of their kingdom at Pavia A. D. 568.

P. 64.

## P. 64. [M]

A ſingular fate attended the Laws of JUSTINIAN. From the unfortunate ſituation of affairs in the weſtern provinces they were never generally received in that part of the empire; in leſs than 40 years after the Emperor's death they began to loſe their authority at Conſtantinople, and in the 9th Century became entirely obſolete.[y]

During the reigns of JUSTINIAN's three immediate ſucceſſors, his books appear to have maintained their ground: they were taught in the Schools and quoted in the Courts of juſtice; the language in which they were written was in common uſe, and the lawyers not only pleaded, but publiſhed alſo their decrees and opinions in the Latin tongue.[z] The ſhock which the empire re-

[y] For the preſent I ſhall acquieſce in the commonly received opinion. The controverſies which this ſubject has occaſioned, are connected with the Hiſtory of a future period.

[z] " Extulit tamen (ſays GRAVINA of theſe times) poſterior " ætas nonullos, qui vitioſæ conſuetudini cultu et delectu ver- " borum obſtiterunt, ac præ ceteris JURISCONSULTI, quos in- " terpretandi neceſſitas in aſſiduâ legum antiquarum et veterum " vocum inveſtigatione detinebat; quo ex ſtudio inhæſit eorum " dictioni priſca verborum proprietas et dignitas." *De Linguâ latinâ Dialogus.*

ceived

ceived under the weak adminiſtration of PHOCAS[a] by the loſs of many of its weſtern provinces and the enſuing ſcene of deſolation which called off the public attention from every ſpecies of liberal purſuit, proved very detrimental to the ſtudy and practice of the Law. Edicts haſtily conceived and drawn up merely to anſwer the purpoſe of particular emergencies, were added time after time to JUSTINIAN's Code, and formed a ſtriking contraſt to that ſtrain of ſimplicity and univerſal juſtice which marks all its deciſions. Theſe Novel Conſtitutions, together with a Greek tranſlation of ſome of thoſe law tracts from which the Pandects had been compiled and the Greek verſion of JUSTINIAN's works by THALELÆUS and THEOPHILUS, formed the body of eaſtern juriſprudence from the beginning of the 7th to the end of the 9th century.

The revolution which took place under the Emperor BASILIUS and his two ſons, has been already ſpoken of. The motives by which they were actuated in their undertaking have been variouſly repreſented. On the one hand it has been attributed to an ungenerous ambition of raiſing up to themſelves a monu-

[a] A. D. 602.

ment

ment of glory upon the ruins of JUSTINIAN's labours; meanly conceiving that by copying his plan, and then deftroying the model, pofterity would neceffarily regard their work as an original compilation. In allufion to this, the Chancellor CIRONIUS fpeaking of the difficulty which IRNERIUS had, in the 12th century to difcover a complete edition of JUSTINIAN's Laws, adds, "This can be "attributed to no other caufe, than the am-"bition of LEO, who, to give greater dig-"nity and confequence to his own compila-"tion, ufed every means to fupprefs JUS-"TINIAN's work: an attempt not very "difficult if we confider the miferable ftate "of the Latin language at that time in the "Greek empire.[b]"

They on the other hand who wifh to exculpate the emperors, tell us, that an earneft defire of working a general reform in the civil adminiftration, which had been fo fhamefully neglected during the turbulent reigns of their predeceffors, was the fole object which led them to undertake this general revifal: That upon the matureft deliberation it was agreed, that many parts of JUSTINIAN's Code

[b] Obfervat. Jur. Canon. Lib. 5. cap. 5.

were become obſolete and others altogether unapplicable by reaſon of the material changes which three centuries had made in the police and manners of the Greek Empire; and that at beſt, the excellent intention of that emperor, of compreſſing juridical knowledge into as ſmall a compaſs as poſſible, was in fact not fully anſwered by his compilation; they therefore were reſolved to uſe their beſt endeavours to procure for their ſubjects this grand deſideratum, and for the purpoſe to comprize in one volume the whole ſubſtance of the *Inſtitutes*, *Pandects*, *Code* and *Novels*, together with all the ſubſequent Conſtitutions of general uſe and authority.[c] That as to the ſuppreſſion of the Roman Law and the obſcurity in which JUSTINIAN'S works continued for ſo long a time, this was by no means owing (as the Lawyers of the Weſt aſſert) to the malevolence of the Greek compilers, but may be more naturally attributed to three very obvious cauſes namely, *The Decay of the Latin Language. The Earthquake which laid waſte the Academy at* BERYTUS; *and the Deſolation ſpread by the Barbarians over the Weſtern Provinces.* To

[c] Proœm. ad Baſilic. (ASSEMANNI *Bibliotheca Juris Orient.* Lib. 2. cap. 16.)

theſe

these has been added, the dreadful conflagration at Constantinople in the reign of ZENO, which (say the advocates for BASILIUS) destroyed one hundred and twenty thousand volumes; but, as that Emperor lived more than forty years before JUSTINIAN, it is, certain, the compilation in question could not then have suffered, and as to the juridical works of the more ancient Lawyers, every title of the Pandects sufficiently proves their existence long after this calamity. In fact, whatever was their conduct towards JUSTINIAN, the Greek Compilers by omitting to quote their authorities after the liberal example of their predecessors, were in a great measure instrumental to the loss of many inestimable tracts of ancient jurisprudence. Nor was this science the only one which suffered by the ill directed zeal of those times. We are informed by ZONARAS, that, from a laudable wish of exciting in their subjects that love of letters for which they themselves were remarkable, both LEO and CONSTANTINE employed a number of able men in making Epitomes, Extracts and Imitations of the most celebrated greek and roman writers,[d] and thus unfortunately were counteracting their good

[d] Annales, Vol. 3. p. 155. Edit. Paris.

intentions by the very means they employed for promoting them. It is obſervable that from this period ſolid learning declined apace: For the Greeks of the lower empire, naturally inquiſitive, but indolent, had now an opportunity of acquiring knowledge without the labour of conſulting original authors: Many of theſe therefore, being no longer in requeſt were ſuffered to periſh to the irreparable loſs of ſucceeding times. With reſpect to the Roman Law (by whatever fate it happened) it is certain that after the age of BASILIUS and his Sons, we hear nothing more of JUSTINIAN's works at Conſtantinople, either in the Schools, or at the Tribunals; and the Eaſtern Empire, till it paſſed into the hands of the Turks in the year 1453, continued to be regulated ſolely by the BASILICAL CODE.[e]

[e] FREHER. *Chronologia Juris.* ASSEMANN. *Bibliotheca Jur. Orient.* p. 167.

The Popes, during theſe rude ages, from political motives, were very ſtrenuous defenders of the Roman Laws in the Weſt. It was their intereſt to uſe every means to check the alarming progreſs of the Lombards in the neighbouring provinces, by ſtrengthening the hands of the Greek Emperors and enabling them to maintain the ſmall territory which remained unconquered in Italy. LEO 4th in the 9th Century writes to LOTHARIUS I. beſeeching him to permit a free uſe

of

## P. 73. [N]

THE principal circumſtances relating to the *Diſcovery* of JUSTINIAN'S PANDECTS, at Amalfi in the year 1135, or 1137, and their conveyance from thence to Piſa, though ſupported by many great authorities, have been very much diſputed by modern writers.[f] A

of the Roman Law: and CONRINGIUS, *De Orig. Juris Germanici*, cap. 20. takes occaſion from this, to aſſert, that JUSTINIAN'S works were, in repute in many parts of Italy, but particularly in Rome and the Exarchate, many years before the reign of the 2d LOTHARIUS, and that the Novels were referred to on eccleſiaſtical matters. See *the Epiſtles* of GREGORY, Lib. 11. Ep. 53. Lib. 12. Ep. 51 and GRATIAN'S *Decretal.* paſſim.

[f] GUIDO PANCIROLLUS, ſays, that in his time (the 16th Century) it was the opinion of many that the PANDECTS, were firſt diſcovered A. D. 1128, in a library which had belonged to the Emperors at RAVENNA, and were from thence tranſported by LOTHARIUS to the Academy at BOLOGNA. But he himſelf believes this MS. to have been the CODE, and agrees in the common opinion about the diſcovery of the PANDECTS. *De claris Legum Interpretibus*, Lib. 2. cap. 13. There are ſome alſo, who upon the authority of an old Chronicle, aſſert that they were taught at BOLOGNA as early as the beginning of the 11th Century, by LANFRANC, afterwards Archbiſhop of Canterbury. MURATORI *Antiq. Med. Ævi.* Diſſert. 44.

gation

full inveſtigation of this ſubject will be entered into in its proper place, the Second Part of this work. For the preſent I ſhall be content to ſpeak of it in general terms according to the received opinion.

LOTHARIUS the 2d, we are told, being at war with ROGER king of Sicily, laid ſiege to the town of *Amalfi*, and among the plunder of that place diſcovered an old MS. Upon cloſe inſpection, it was found to be that large Body of Juriſprudence compiled by JUSTINIAN, which, ever ſince the days of Charlemagne, had been known (by name only) to the Civilians, but had hitherto eſcaped their moſt diligent ſearch. The Piſans, who had aſſiſted LOTHARIUS, at this ſiege with a fleet of ſhips, requeſted of him to beſtow upon them this MS. as the ſole reward of their ſervices. They obtained their requeſt, and conveyed it home with them. It remained from that time till the year 1406, carefully preſerved in the city of Piſa, from whence with much more plunder it was then carried to Florence, where it has ever ſince been kept, and is regarded by that people as an ineſtimable literary treaſure.[h]

[g] SIGONIUS, *De Regno Italiæ*, Lib. 11. p. 270. Edit. Franc. 1591. *Muratori, Antiq. Medii Ævi*, Tom. 3. Diſſert. 44. GIANNONE,

Henry Brencmann, who, at the beginning of this Century, ſpent many years in examining upon the ſpot, the various memorials extant on this ſubject, cites in confirmation of the ſtory, an ancient MS. of Piſan Annals in the Dominican Convent at Bologna, which ſays, that "on the 4th of Auguſt, in the year 1135, forty ſix Piſan gallies "joined Lotharius at the ſiege of Amalfi, "that the place ſurrendered, and that among "the plunder, Justinian's Pandects were

Giannone, *Iſt. civ. di Nap*, Lib. 3. cap. 3. and Lib. 7. cap. 2.

Upon cloſe examination it perhaps will be found that the circumſtance of Amalfi's *commercial conſequence* during the 11th and 12th Centuries, and its great communication with Conſtantinople, gives more probability to the ſtory, than has generally been allowed. Eſpecially when we conſider that the people of that place, had (at the period of which we are ſpeaking) drawn up a Code of Maritime Laws, under the title of Tabula Amalfitana, which was acknowledged by all the neighbouring ſtates, and continued in force for many centuries after, and that theſe Laws, were compiled for the moſt part from the *Rhodian Laws*, by which the Romans, and after them, the Greek Emperors regulated all matters of trade and navigation, and which were on that account admitted into the Pandects. Marino Freccia *De Subfeudis. De Officio Admiral.* Lib. 1. num. 8. Welwood's *Abridgement of Sea Laws.* Schardius's *collection of the Rhodian Laws.*

found

"found." He differs however from moſt others, in denying that the Piſans received this MS. from LOTHARIUS as a recompenſe; and aſſerts that it was conveyed away privately in a ſmall cheſt by one of their ſoldiers, who at the time ſuppoſed it to contain money or jewels; but that upon diſcovering his miſtake, he delivered it into the hands of the magiſtrates.

It has been ſaid that the Roman Law was very much cultivated about this time by the Piſans, but it does not appear that either their curioſity or their zeal was awakened by this diſcovery, for though it remained in their city near three centuries, we have no teſtimonies of its having ever been either copied or illuſtrated. The moſt eventful part of its hiſtory commences after its removal to Florence, where it has been viſited at different periods by ſome of the moſt learned men in Europe. POLITIAN in the 15th century, after a very minute examination, gives it as his opinion that it is a MS. of JUSTINIAN's age, an opinion which he tells us is not haſtily delivered, "Hoc enim mihi inſpicere, per otium licuit, rimarique omnia et *Olfacere*; quæque vellem excerpere diligenter, et cum vulgatis exemplaribus compare.

"rare.[h]" In one of his letters from Florence he says—"This copy of the Pandects is inestimable. Accursius and all accurate lawyers refer to it in doubtful cases as the most faithful, and consider any variations from it, which may occur in other copies, as errors. They hold it in such veneration here, that whenever it is produced, which rarely happens but upon some extraordinary occasion, it is by torch light; the Magistrates and Monks, who always attend, standing with their heads uncovered.[i]" Budæus, who visited Florence in the following century, gives the same account of this ceremony, and adds, "that it was then esteemed so great a favour tobe admitted to read it, that had he not been there in quality of an Ambassador, he probably must have failed in his application.[k]" After Politian, the celebrated Ant. Augustinus, at the age of twenty one, passed a considerable time in transcribing and collating this MS. upon which, on his arrival at Venice in the year 1543, he published his

[h] Lib. 10. Ep. 14. and again *Miscell.* cap. 41. The same writer has drawn up in the Epistolary form, the Index which stands at the head of the Pandects. Lib. 5. Ep. 10.

[i] Lib. 10. Epist. 5.

[k] Annotat. in Pandect. p. 67. edit. Basil. 1557.

very learned *Emendations* and *Opinions*, and ſome time after, another work, *De Nominibus Propriis Pandecti Florentini.* He allows it to be of very high antiquity, but does not believe it ſo old as the age of JUSTINIAN by more than two centuries.[l]

THEODORE GRONOVIUS, who through the intereſt of MAGLIABECCHI ſtudied the MS. for ſome months and publiſhed his remarks and emendations in the following year 1685, perfectly agrees with this opinion of AUGUSTINUS, and it has been in general adopted by ſucceeding writers. But BRENCMANN, together with that elegant Antiquary ANT. MAR. SALVINI, after conſidering it moſt accurately and comparing it with Charts and Inſtruments of various ages, is inclined to carry it back to the cloſe of the 6th Century, a period not very remote from the æra of its compilation.[m]

[l] AUGUSTINUS. *Emendat. Pandect.* Lib. 1. cap. 1. MABILLON. *De Re Diplomaticâ.* Lib. 5. Tab. 7. p. 357. has given a ſpecimen of the Florentine Pandects communicated to him by MAGLIABECCHI, who was then Librarian to the Grand Duke.

[m] BRENCMANN in the year 1721 publiſhed the firſt part of his large work, on the *Hiſtory of the Florentine Pandects.* It drew him ſome time after into a very ſmart controverſy on the ſubject with ſome German and Italian Civilians, the principal

cipal

But, whatever be the age of this curious MS. it is certain that in conſequence of its diſcovery, the Study of the Roman Civil Law began to be zealouſly cultivated in various parts of Europe. The Academy of BOLOGNA had for many years been in high repute, and at this time the celebrated IRNERIUS, who had previouſly ſtudied and taught the civil law at Conſtantinople, was a profeſſor there. Some of the Italian writers indeed aſſert, that long before the year 1137 he obtained permiſſion to read lectures on the works of Juſtinian, and had illuſtrated many parts of the Pandects from the Copy ſaid to have been brought from Ravenna.[n]

To the ſchool of this civilian we are indebted for the laborious commentators of the following age; whoſe gloſſes, notwithſtanding

cipal heads of which are clearly ſtated in the 3d Vol. of the Supplement to the *Acta Eruditorum*, Anno 1739. p. 165 et ſeqq. and again, Vol. 4. p. 164. et ſeqq. BRENCMANN's moſt formidable Antagoniſts in this diſpute, were GUIDO GRANDI, a Profeſſor of Mathematics at Piſa, and BERNARD TANUCCI, public reader of law at the ſame place.

[n] MURATORI's Diſſertation *on the Fate of learning in Italy from the year* 1100. *particularly in the Academy of* BOLOGNA. Tom. 3. Antichita Ital. CONRADE, Abbot of the Premontré Order at Urſpurg, aſſerts the ſame in his *Chronicle*. p. 342. ad Annum 1126.

they are ſtrongly marked with the barbariſms and abſurdities of thoſe times, ſerved to clear away difficulties and to open a road for the more elegant writers of the 16th century, when among other uſeful ſciences, JURISPRUDENCE reſumed its ancient dignity, and began to be conſidered as a neceſſary branch of polite literature.[o]

[o] We may be juſtified perhaps in affirming that neither POLITIAN, ERASMUS or the SCALIGERS contributed more to the promotion of elegant learning by their hiſtorical and philological labours, than ACCURSIUS, PITHOU and CUJACIUS did by their juridical works.

FINIS.

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